

A    T H E S I S

on

THE INFLUENCE OF ROMAN LAW ON THE  
HISTORY AND DOCTRINE OF THE CHRISTIAN  
CHURCH DURING THE FIRST THREE CENTURIES.

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U N I V E R S I T Y    O F    E D I N B U R G H

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B Y

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## PERSONAL FOREWORD.

The following Thesis has a very simple origin.

While studying Law, over twenty years ago, under the late Mr. W.H.Hastings <sup>Keble</sup> ~~Keble~~, M.A., of Lincoln's Inn, Barrister-at-Law, I was struck with certain passages in Maine's "Ancient Law", dealing with the subject of the present Thesis.

The novelty of the theme made me desirous of consulting some competent scholars, with the result that I was advised to pursue the matter, and make it a special work of research, as the field was untraversed.

I soon discovered that I had struck a very rich vein of truth, which had been but little worked. This seemed to be due to the fact that Law and Theology had met in very few scholars, as the study of Law has been looked upon as foreign to the domain of Theology.

A Thesis on so difficult and important a subject, and demanding so wide a scope of enquiry, cannot hope to be free from many imperfections.

It is only right that I should here state that during my study of the legal terminology in the Epistles of Paul, particularly the Epistle to the Galatians, I was for many years unable to decide whether the apostle was referring to Roman Law, or to that Law in its Hellenistic form, or to Greek Law. Sometimes I was drawn to the view that such legal terminology as occurs in these Epistles, is not technical and technically accurate, but just the general acquaintance with contemporary legal practice which a layman might have, and that on the whole, the law is more likely to be Roman than Greek.

I must here express my gratitude to the two supervisors appointed by the Board of Theological Studies, Dr. Mackintosh and Professor Mackintosh, for their kind help and guidance,

and to Principal Hywel Hughes, for his inspiration and interest,  
and to Br. Souter of Aberdeen, who warned me in a personal letter  
to distinguish the Roman Law as we find it in the Roman Law books,  
and the law which was to be found in the Eastern Roman provinces.

I would fail in courtesy if I did not acknowledge my debt  
to Professor Otto Eger, who kindly sent me his Rectorial address  
at Basle, to Dr. Deissmann and Professor W. A. Curtis, for in-  
valuable help.

(~~Signed~~) W. Phillips.

Llandudno.



THE ROMAN EMPIRE AND CHRISTIANITY.

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Before entering on the discussion of the influence of Roman Law upon the development of Christian doctrine, and the life of the Christian Church, it may be well to describe briefly the place and influence of the Roman Empire generally in the preparation for, and in the development of Christianity.

Christ came, in the words of the Apostle, "in the fullness of the time". The Great Hour in the history of the world had struck. The phrase suggests that our Lord came when the world was ready for Him, and after a long preparation, a preparation which was not the result of mere coincidence, but bears striking evidence to a definite purpose traceable in the history of the ages preceding Christianity. This providential guidance can be traced not only in the conditions of the environment before and at the advent of Christ, but also during the succeeding ages. In fact, there is always a way being prepared for Christianity, but we naturally find signs of the most direct and purposeful preparation in the history of Israel, and within the sphere of the so-called Graeco-Roman world during the Graeco-Roman period.

The Graeco-Roman period may be considered to begin with the conquests of Alexander the Great, and to end with the Fall of the Roman Empire. Scholars write of the Jewish Preparation, the Greek Preparation and the Roman Preparation, but we have to remember that these aspects are not really separate during the period under review. They are inter-related, and overlap each other, but our emphasis in this chapter will be on the Roman side of the Preparation.

Alexander the Great is spoken of as the first to conquer the world. He united Greece and Macedonia, and conquered the Persians. Death put an end to his conquests in 323 B.C. but his progress shook the ancient world to its very foundations,

and compelled it to think afresh. He also, like the Greeks before him, and the Romans later, arrested the Oriental danger which threatened to swamp Western civilization. He also greatly extended the province of Greek culture, and brought East and West into those relations of interaction which have never since been broken. He treated the conquered not as slaves, but as men. By encouraging inter-marriage he prepared the way for a larger humanity, made it easier for men to believe in the unity of mankind, and inaugurated that comprehensive cosmopolitanism which reached its apogee in the Roman Empire. The work commenced by him was carried on by the Romans. After long and bloody wars Rome managed to conquer the whole world, apart from those far Eastern nations beyond India, of which the Western world knew little, if anything. Roughly, the Empire extended from the shores of the Atlantic, washing the coasts of Gaul and Spain in the West, to the Indian Ocean in the East. From the Baltic in the North to Lake Tanganyika in the South. There was one government over all the nations, and one Law (the Common Law) in force from one end to the other of the Empire. The world enjoyed universal peace for over two hundred years after the foundation of the Empire by Augustus Caesar, apart from some frontier wars which hardly touched the life of the people. This unity of government fostered the idea of the unity of humanity, and the conception of Empire accustomed the subject to the thought of one universal kingdom. Incidentally, this conception was helped by the increasing readiness to accept Monotheism, due mostly to the influence of the Jewish Diaspora, but Mr. Ernest Barker ( cf. article in "The Legacy of Rome") holds that it was Oriental in origin, at any rate, Hellenistic. It must be remembered, however, that it was the legal and practical genius of the Romans that made it ~~in~~<sup>a</sup> fact in the history of the world. The Roman Empire was the result

of the fusion of Roman political development and Roman institutional structure with Hellenistic ideas. The Empire, however, was a single cosmopolis of the inhabited earth, fostering the idea of the equality of all free men in the life of common humanity.

The cohesive principle of this unity was the deification of the Emperor. Thus loyalty could become a religion. The practical genius of Augustus and his successors, saw the value of the customs of some Oriental nations of looking upon their kings as gods, or sons of God. Egyptian kings were regarded as incarnations of the god Ammon or Ra. In the Hellenic world the nearest approach to this thought was the superhuman honour paid to their heroes. (θεοῖς ἥρωες τε )  
 The custom of ascribing the title of θεὸς ἐπιφανής to the Roman rulers began in Asiatic communities, due probably to the habit of cringing adulation characteristic of the Eastern races, and genuine gratitude for the stability of Roman supremacy and the consequent peace.

In 42 B.C. apotheosis was officially decreed for the dead Julius under the title Divus ( not deus). Augustus, for a time, restricted the worship of Roman citizens to the Divus Julius, but accepted later divine honours for himself from his Graeco-Asiatic subjects. After the erection of a temple  
 P. θεὸν σεβαστοῦ καὶ θεὸς ρωμῆς divine honours were showered upon him in his Asiatic dominions. The Imperial cult became an elaborately organized institution, and Ramsay holds that this was the real basis of provincial unity, and the most influential idea in Asia.

(vide Letters to the Seven Churches).

There are some scholars who trace the application of the terms Lord, Son of God, etc. to Jesus to the influence of this Emperor Cult, but with hardly sufficient foundation. It is forgotten that these terms were familiar to readers of the Old

Testament. Later in the history of the Church this cult became a stumbling block, and there arose a life and death struggle between the Christian Faith and the Imperial worship.

The result of the use of identical names ( such as *κύριος σωτήρ, ὁ ἀγαπητός, ὁ ἀρχηγός, ὁ εἰκὼν τοῦ θεοῦ ὁ πρωτοτόκος*) ω for Christ and the Emperor by the early Church was either the creation of a bitter antagonism, or the awakening of a mysterious interest in Christ and His Religion. The Pax Romana was an inestimable boon to regions which had been for centuries the arena of bitter and deadly strife, but Emperor worship left unfilled the religious cravings of the people, and all manner of Oriental cults were welcomed as means of satisfying these cravings.

The Christian religion was at first thought to be a form of the Jewish religion, and therefore for a time enjoyed the privilege of being a religio licita, but when it was found that it would not compromise with the State religion, and also was condemned by the influential followers of the Jewish religion, it became a religio illicita. This refusal to compromise led to the persecution of the Christians, but the very hindrances became in the hands of Providence the means of the promotion of Christianity. The fact that so many were ready to die for their faith, and its survival of fierce persecution left an impression on the minds of men of its Divine origin. The Imperial cult also helped to centralize the forces of evil and thus prevented the efforts of the Church from being scattered.

But there is another side to this matter. The Imperial ruler and the Risen Christ were each the centre of a new order. There was a thrill of expectancy at the birth of Augustus. (cf. the 4th Eclogue of Virgil 291-296, and Horace in his *Carmen Seclare*). The spirit of the time must have worked

powerfully in favour of the Christian missionaries who announced that the Messiah was indeed come, a King, whose pathway had not been prepared by force and bloodshed like that of Augustus, whose kingdom, on the contrary, was "righteousness and peace and joy in the Holy Ghost", corresponding to the *φίλανθρωπία* ( ) the *χάρις* or grace (~~clementia~~<sup>clementia</sup>) of the Emperor. It opened up avenues in the Hellenistic mind for the entrance of the highest Christian conceptions.

(see Kennedy. Expos. April 1919.)

It is also possible that the conceptions covered by these titles were in later years coloured by their associations with Emperor worship, and may sometimes have lost some of their primitive purity, and Hirschfield holds that the Christian Church ~~Church~~ in no small measure derived the outward forms, titles and insignia for its councils and priests from that provincial Emperor worship which for three centuries had constituted the Pagan emblem of Roman Imperial unity in the East and the West.

The establishment of the Roman Empire was synchronous with the advent of Christianity, and may have been necessary for the early success of our religion. The Empire meant a universal peace and the settled authority of Caesar.

Professor Foakes Jackson says it would be difficult for us to imagine that Christianity could have made progress at any other period in the history of the world. First of all, the constitution of primitive society would have been an insuperable bar to the preaching of the Gospel, nor could a universal religion have had an attraction so long as the ancient ideas of national culture and tribal gods retained their hold on the imagination of men. The establishment of the Empire helped to disintegrate these ideas, and to prepare the way for more universal ideas.

The Pax Romana also shewed the nations the value of order and organization, and the benefits of the Roman administration.

though secular, were undoubtedly a help to the success of early Christianity. The Empire facilitated intercommunication amongst the nations by means of the famous Roman roads, and the safety and security of ships at sea protected from the attacks of pirates by the Roman powers. These great roads, joining the extreme and distant parts of the Empire to the centre, were built mostly for military purposes, but this again is only one instance out of many of the way man proposes and God disposes. They also facilitated communications, converse, and commerce. Travellers came from one end of the Empire to another. The armies were recruited from all nations, and sometimes removed to other parts of the Empire, settled down there. The Roman public post, however, was confined to State purposes, (cf "Legacy of Rome." p. 160.) but commercial companies and wealthy men had their own staff of *tabellarii* (cf. Pliny's correspondence with <sup>a</sup>Trojan). The letters of St. Paul and others were no doubt put into the charge of some convert who happened to be travelling in the right direction. We find that early Christian missionaries mostly journeyed west, because the Roman Empire lay west of Palestine. It was along the Roman roads that they travelled. Within the Empire they had all the advantages for propagating ~~the~~ teaching- unity of government, of language, religions, philosophical and social ideas which were permeating the whole Roman world, and adapting the soil for the reception of the new seed. It is significant that the cities which represented best the mixed character of Roman civilisation were just those cities which supplied the largest number of converts to Christianity. Such were Antioch, Ephesus, Alexandria, the new city of Corinth, which Julius Caesar had founded and Augustus established, such above all was Rome itself, the common centre in which all nationalities gathered, and where the "Orontes flowed into the Tiber." Had missionaries taken the contrary direction, they would have met with insuperable

difficulties. We have plenty of evidence in the New Testament that the conception of Empire had profoundly impressed the mind of St. Paul. It was his ambition to preach the Gospel in Rome, and even in Spain, the uttermost part of the West. To him, Christianity was the religion for the Empire, and he was proud of his Roman citizenship, and of the protection afforded him by the Law and power of the Empire. It was only when the Emperors found that Christianity was increasing in power, and because they feared that power that they resorted to persecution.

There was one dominant system of Law throughout the civilized world, and Christianity obtained a lasting hold in the first centuries only in those areas dominated by Roman Jurisprudence. It was a Roman census which determined that Jesus be born in Bethlehem rather than Nazareth. It was a Roman procurator who condemned Him, — Caesar's revised "*Lex de Majestate*" being the excuse. Our Lord was brought up in an atmosphere created by Roman Law and government. The centurions and soldiers of Rome were among those that believed in Him. The New Testament throbs with the life blood of the Roman Empire of the first century. It was written within the Empire's geographical borders and under Rome's political administration and it had its setting in the economic and religious life of the people. Though Herod was king, the census, (*Luke ii* ) shows that Rome was the real power, and that her governor in Syria had general oversight in Palestine. (cf. also possible reference to Archelaus' visit to Rome in *Luke 19*.)

E.Hicks, A.D. in "Traces of Greek Philosophy and Roman Law in the New Testament" (1896 S.P.G.C. p. 13.) holds that Rome by its mighty legal system, the greatest and most perfect in its form the world has ever known, educated the world, and the "dominance of a race possessing the element of mental leadership was one more contributory factor to the progress of the revelation of Jesus Christ." There are distinctly traces of

Roman Law and custom in the New Testament. It provided the Cross which became the symbol of Christianity. The message on the Cross, written in Hebrew, Greek and Latin was an unconscious prophecy of the world-wide meaning of Christ's death.

The wonderful advantages that Christianity derived from its origin within the Roman Empire were noticed by the Fathers of the Church e.g. Origen ( in "Contra Celsus. vol. ii") and Eusebius of Caesarea (in his "Demonstratio Evangelica", vol. 1. S.P.C.K. p. 161 - 1920)

"Had any told St. Paul that the Emperor Claudius was his chief co-operator, or Claudius that the Jew just setting out from Antioch was about to found the most enduring part of the Imperial structure, both would have been astonished. Nevertheless, both sayings would be true."

(Dr. Muntz. "Rome, St. Paul and the Early Church"  
p. 15. 1913.)

In addition to these benefits the administration of public affairs was marked by no small degree of justice and efficiency, especially from the date of the termination of the Republic in 27 B.C. Remote communities looked upon the central civic administration at Rome as a model to be imitated in its smallest detail. Movements such as these undoubtedly paved the way for the onward march of Christianity. (See 'Mission of Rome' in Angus' "The early environment of early Christianity.")

Rome also protected the West against the East, and then kept guard while Western culture and Eastern religions, especially Christianity, conquered the Empire. It protected and extended Greek culture ( a work begun by Alexander and his successors) and opened the whole world to the intellectual conquest of Greece, and what she did for Hellenism, she did for Christianity. The Romans slowly extended the franchise, and made conquered peoples, even slaves, Romans, and the political



organisation of their Empire was of importance in their influence on the organisations of early Christianity. It also protected what is now modern civilization against the irruptions of northern barbarians, until they, educated by her law and language, and impressed with her greatness, became docile pupils of the Christian Church. She Romanized inferior civilization by impressing upon them her language, laws, and institutions, teaching barbarians respect for authority, imparting a taste for intellectual and spiritual things. Christian preachers were able to penetrate to the West in the tracks of Roman civilization. Rome's spiritual weapon was her Law - the prime element in the formation of western civilization. Christian civilization has not accepted Roman Law as a whole. Portions of it, notably the law of slavery and marriage, have been rejected, but the fundamental institutions of Roman law, the family, private property and the sanctity of contract, which Christian civilization has made its own, are truly human and natural. Christianity did not do away with slavery for many centuries. The marriage law of the scrupulously religious legislator, Justinian, is very far from the Christian law, as it existed from the first days of the Church.

Greek culture, and to a less extent and at a later stage, Christianity were great factors in the evolution of the Civil Law, more particularly in its universalization. The Juristic method which is its peculiarly glory was a purely national creation of the Romans, having become a fixed tradition before the end of the Republic. The Roman Law left its impress also upon Christian Theology as will be shown in a later part of this work.

One of the greatest benefits the Roman Empire secured for the furtherance of Christianity was the prevalence of an international language. The increasing cosmopolitanism, the breaking up of Greek autonomy and exclusiveness, commerce, mercenaries

in the armies, the campaigns of Alexander and his colonies furthered the rise of a κοινὴ διαλέκτῃ from the 4th century B.C. onwards, which became the Lingua franca of the Eastern portions of the Roman Empire. It was too firmly rooted to be dislodged. Though Roman pride could recognise only Latin as the official speech, Roman sagacity found in Greece a useful bond and ally of their administration.

A Greek translation appeared along with Latin official documents. The Greek spirit and culture, which to some extent inevitably accompanied the use of the Greek language, prepared the way for Christ, if in no other way than by raising problems and giving expression to needs that only Christianity could satisfy. While the Jews of Palestine were, on the whole, hostile to Greek culture, the Jews of the Diaspora were friendly. Apart from the most Eastern Jews they mostly spoke Greek. The LXX is a proof of its prevalence and influence, and Schurer says the language of the Synagogue was, as a rule, without doubt Greek. The New Testament itself was written in Greek.

But while the Gospel was being preached in Greek in the East, the Romans were preparing the way for its extension to the West. They furnished Christianity with another universal language to unify the conquered peoples. It conserved what was best in the old to bequeath to its historic successors, and finally surrendered its sceptre to the Church to which she had given a language, and a polity and a world-outlook. The Vulgate proved to be to the West what the LXX had been to the East. It was for hundreds of years the only universal Bible of Europe. It became directly or indirectly the parent of all the vernacular versions of Western Europe (except the Gothic).

The inhabitants of the province of Northern Africa were of Semitic origin, with a language similar to the Hebrew, but they became Latinized in customs, laws and language under the Roman rule. The Church in that region therefore belongs to

Latin Christianity, and plays a leading part in its early history. Carthage (founded 300 B.C. - fell to the Romans B.C. 146) was the Rome of Tertullian, Cyprian, Augustine and others, men who have left their mark upon the life and thought of Western Christianity. The oldest Latin translation of the Bible, mis-called "Itala" (the basis of Jerome's Vulgate) was made probably in Africa and for Africa. Latin Theology was not born in Rome, but in Carthage. Tertullian was its father - followed by Minucius Felix, Arnobius, Cyprian (3rd Cent) and then by the sublime intellect and burning heart of Augustine. His writings led Christian thought in the Latin Church throughout the dark ages, stimulated the Reformers, and are a vital force to this day.

Indirectly, the Roman Empire, through the facilities for travel and commerce afforded by its roads, bridges, and administration, and through its wise, cautious and liberal treatment of the Jews, contributed to what was "probably the largest single factor, and one main reason for the success" of Christianity, viz. the wide dispersion, influence, and power of the Jewish settlements (known as the Diaspora) throughout its extent, but except in so far as this was furthered by Roman causes, such and as the privileges accorded to the Jews, it does not come within the province of our essay. Their religion was acknowledged as a religio licita, and they were excused from participation in the Imperial cult. For civil processes between Jews they were allowed to use their own law and hold their own courts. The Jew of the Diaspora served as mediator between East and West. He was Oriental in his religion and Western in his culture, philosophy and enterprise. The Jews of the Diaspora, especially the cultured Jews of Alexandria, of whom Philo is a conspicuous example, helped to build a bridge to join Greek

thought and Hebrew Religion, and thus prepared the way for the systematic expression of Christian thought upon the great verities of our religion.

Another indirect way in which the Roman Empire helped to prepare the way for Christianity is deserving of mention, and that is, the facility which conditions of life gave to the spread of the Greek mysteries, and Oriental mystery religions. Traces of Mithraism, for example, have been found in outlying parts of the Empire, such as Britain, and the evidence goes to prove that at one time Mithraism was a dangerous rival to Christianity. Some scholars have held that the terms, ceremonies, and tenets of these cults directly influenced Christianity, and they find traces of this influence in the Epistles of Paul.

But the central conceptions of the mystery religions belong to a different atmosphere <sup>from</sup> ~~to~~ that in which the Apostle habitually moves. Paul and other Christian leaders were inevitably forced to come into contact with Pagan mysteries, and probably took advantage of similarities to enforce the Christian teaching, but the essential characteristics of Paul was detachment from ceremonial. The sacramental ideas of early Christianity have undeniable affinity with these same contemporary Hellenistic cults ( cf "Table of the Lord and Table of *daemons* " ) but the Christian sacraments originated in a Jewish content; they have behind them the prophetic symbolism of the old Testament, and their meaning for the earliest Christians was knit closely with ideas drawn from Jewish eschatology. Yet Christianity was <sup>a</sup> sacramental religion, and its sacraments answered to a wide-spread need of the Gentile world, to which the great advance of mystery religions in the same period also bears witness.

( cf Dodd in "Authority of the Bible" p. 198-9.  
Kennedy, "St. Paul and the Mysteries.")

The most potent internal factors in the evolution of Christianity were, according to Dr. Fairbairn, "Greek Philosophy,

Roman polity, and popular religion. The intermingling of races in the Empire resulted in a kind of eclecticism in philosophy, which gave rise to philosophies like the neo-Pythagorean, ecstatic, theosophic, miraculous, penetrated with the true Oriental spirit of sensuous ascetism and speculative licence, or mixed systems of thought and ritual line Gnosticism, Dualisms through and through, societies of the initiated dividing themselves by their *quorin* from the vulgar crowd, and God from the world by a multitude of personalized abstractions. By *charms* protecting themselves from matter and by *aeons* protecting God, or religious doctrines like Manicheism which attempted to solve intellectual difficulties by the theory of rival deities" (Dr. Fairbairn in "Christ and ~~Modern~~ Theology", pp. 59-60)

The Eastern Church, which came under the influence of the Greek spirit, was compelled to defend the orthodox Christian doctrine from being corrupted by <sup>these</sup> ~~these~~ rival philosophies, and their attempt to do so resulted in the creeds of Nicea and Chalcedon. The influence of Rome cannot be said to be very prominent in the speculations which led to the formulation of these creeds, for the Roman genius was not speculative, but it must be granted that the practical genius of Rome influenced their final form, a fact which makes apposite the following remark of Dr. Orr - "The curious thing is that this creed, (referring to the creed of Chalcedon) with its unspeculative character - a product of the Latin practical genius - should be held to be a creation of Greek metaphysics." ("Progress of Dogma" - p. 193.)

The desire of Constantine for religious peace in the Empire hastened the decision of the Church, and the practical genius of the Roman bishop helped to formulate it.

The form of Greek Philosophy which appealed most strongly to the Roman~~ism~~ was Stoicism. "By its help the ideal man was studied, virtue cultivated, law magnified, the State made to experience a sort of Apotheosis."

(Fairbairn in "Christ and Modern Theology".)

To the Stoics the world <sup>owes</sup> ~~ever~~ the enunciation of principles which Christianity has at last made real~~ities~~. The noble declaration that "all men are born free" was first made by a Stoic. Stoicism provided congenial matter for the Christian spirit to work upon, especially do we see this in Paul, not only in his method and vocabulary, but also in such important conceptions as "conscience" "the law of nature", as the ~~form~~ of morality (Rom. 2. 14-15) and of "contentment" or self-sufficiency, (Phil. 4. 11-12) as a quality of the good life. These are thoroughly stoical. The New Testament has not copied, but absorbed and transmuted kindred ideas in Stoicism, and inspired them with a distinctive religious experience. Stoic principles were ~~conspicuously~~ influential in the West in all Roman literature from the beginning of the Christian era, and they were greatly used by kings and emperors. "The Roman nobility adopted the system from Panast<sup>us</sup>: the legislation of the Gracchi, the pure administration of men like Mucius Scaevola, the Pontifex, and Rutilius Rufus, and the new spirit of Roman law embodied in the theories of the "Jus Gentium" and the "Jus naturae" are all due to its influences. Under the early Empire all good administrators were men imbued with Stoic principles; and it is not too much to say that through Stoicism the Roman world-empire found itself a soul. The examples of Seneca and Marcus Aurelius show its fuller development in social and political life."

( E.V. Arnold in H.D. R~~and~~E

Sub verbum "Stoicism")

The same author accounts for the similarity in tone and

content between parts of the Pauline Epistles, the writings of Seneca, and the records of the teaching of Epictetus by the fact that he was brought up in Tarsus in a society permeated by Stoic thought. The acceptance of Stoicism by the Romans, and its natural appeal to the Roman character, helped to prepare the way for a religion which could make its principles realities, while at the same time tempering its sternness, and substituting for its Fate, a belief in God the Father of our Lord Jesus Christ.

The influence of Roman ideas and Roman Law is to be found most conspicuously in the development of Western Theology. The Western school, like the Roman, had not much sympathy with philosophy. Their tendency was to suspect it as the parent of error ( cf. Tert. Apol. 46) They found it easier to confront the Gnostic with the consent of the Catholic Church - the "imperial authority" of the Church. The instincts and legal training of a man like Tertullian predisposed him powerfully to accept and adhere to a fixed and authoritative standard of faith. This conception of the functions and internal relations of the Divine "Persons" is largely coloured by Roman Jurisprudence. The very terms which he introduced into Latin Theology are Juridical. He regards the Divine "self-revelation" as a mode of 'administration', ~~employing~~ implying grades of rank, agency and delegated authority. (Ottley, "The Incarnation", p. 254) "Persona" is a term derived by him from Roman Law, and means "person" in the sense of an individual having legal rights and functions, and he uses the Stoic term "prolatio" to express the forthcoming of the Word in creation. The legal view of sin becomes prominent in his teaching, "culpa", "meritum", "reatus", "crimen", "delictum."

The language of De Poenit, ii.iii is almost exclusively legal in tone. He also introduced the term "satisfactio", belonging in Roman law especially to the sphere of obligations.

Augustine, also, according to Westcott, looked at everything from the side of law and not of freedom; from the side of God, as an irresponsible sovereign, and not of man, as a loving servant. In spite of his admiration for Plato, he was driven by a passion for system, reminding us of the old Roman religious lawyers, to fix, to <sup>2</sup>enternalise, to freeze every idea into a rigid shape. He could not shake off the influence of his legal and rhetorical training.

In the words of Fairbairn - "The genius that made philosophy the creation of classical Greece made theology the determinative factor in the Greek Church. The political strength and capacity that gave to Rome the sovereignty of the world, the juridical and forensic genius that made its law almost ideal, developed the Roman church into the Catholic Church. The great fathers of the East were theologians, those of the West were Jurists or statesmen. Clement sees in philosophy the preparation for Christ. To Cyprian the Church was a civitas, and Augustine was the ~~pal~~mary example of the philosophic mind governed by the political idea."

Indeed, the influence of Roman law has been found much earlier than these fathers, even in the epistles of Paul, in his teaching about adoption and the ~~pe~~ Law as a paidagogos to the school of Christ, and in John's teaching concerning the "Advocate", but there is no doubt of its influence upon Western Theology, and the Western Church system.

Hobbes said that the original of that great ecclesiastical dominion, the Papacy, is no other than the Ghost of the deceased Roman Empire sitting crowned upon the grave thereof.

The organisation of the world Church was modelled upon that of the world-state. The detail was filled in later, but the broad lines of the fabric stand to this day. The diocese represents the civitas: the archiep~~sc~~apae provinces, the Roman pr~~ov~~incia, and the Catholic Church under the absolute rule of the Pope, the vicegerent of God, the Empire under the Divus Caesar."



Professor W. Ward Fowler in his interesting Gifford Lectures on "The Religious Experience of the Roman people", also finds traces of the old Roman religion in the terms and ceremonies of the Christian Church. He tells us that one of the chief characteristics of the Latin Fathers is their fondness for using the famous words of the old Roman religion. They inherit the Roman love for strong technical words of pregnant meaning which has left us so many imperishable legacies in terminology ('municipium', 'colonia', 'imperium', 'collegium', etc.)

The same is true of the language of religion. "Religio" originally meant the feeling of man in the presence of the supernatural, and then came to include the cura et caerimonia expressive of that feeling, but under the influence of the conflict of religions each separate system came to be called a religion.

('Religio Dearum' > c religio Dei:')

In Minucius Felix in "Octavius" "nostra religio, vera religio" and Lactantius, in "De Justitia", it comes to mean not awe only, or cult only, but a mental devotion capable of building up character. Another legacy in words is that of "pius."

In the old Roman religion it meant the man who strictly conforms his life to the "Jus divinum," for the "impius" is the man who breaks the "Jus divinum" and the "pax deorum;" for him no piaculum was of avail. Such a crime is the nearest approach in Roman antiquity to our idea of sin. "Pietas" is a virtue, that of obedience to the will of God, and herein differs from "Religio" which was not a virtue, but a feeling, but in Lactantius it has the same meaning as "religio."

Another word, bequeathed by the Latin language rather than the Roman religion is "sanctus," which has played a large part in the terminology of the Church.

There was no doubt a religious flavour in the words from the beginning - expressing a conjunction of religious and moral purity. Then we may mention "sacer," with its compounds 'sacrificium' and "sacramentum." In Roman public law the latter meant

(1) a legal formula under which a sum of money was deposited in a temple to be forfeited by the loser in a suit:

(2) oath of obedience taken by the soldier. In the earliest Christian writers it usually means a mystery, but in other passages the idea seems to be that of military service.

The same author sums up the ~~debt~~ of Christianity ~~to the Christianity~~ to the old Roman religious experience after the paralysis or hypnotism of the religions of the State,

(1) The educated part of Roman Society had been brought to the very threshold of a new and more elevating type of religion, by Greek philosophy translated to Roman soil, and chiefly by Stoicism. The first appeal to the conscience of the Roman came from Stoicism.

(2) Another ingredient was that imaginative ~~transcendentism~~ in which the soul becomes more important than the body.

(Mysticism of Pythagorean, Platonic and Stoic Philosophy).

They stimulated questions about the purpose of life, ~~after about~~ death, and immortality, and prepared the Roman mind for Christian Eschatology. (cf. St. Paul, 2 Cor. 5. 4.)

All religions of that time were religions of hope, but Christianity was primarily a religion of faith.

(3) The third ingredient was the kindly, charitable outlook upon life found in the poems of Virgil, which is associated throughout ~~th~~ with the idea of duty and honourable service.

(4) The revival of the old religious forms by Augustus and the consummation of this work in the splendid ritual of the 'Ludi saeculares' was a preparation for Christianity, in that it renewed the idea of the connection of religion and the State, and of ~~the~~ religious duties of the individual citizen towards the State. It preserved the outward features of the old State religion, ~~and~~ such as the Calendar, the ritual and the terminology or vocabulary, and handed these down to a time when they could be of service to a Latin Christian Church.

This weakened the worship of the *Caesars* , and prevented the adoption of another religion such as *Jn* or *Mithraism* before Christianity was ready. The continuity of the old religion was of value in keeping the Oriental cults from occupying too much ground and in checking too rapid a growth of individualism, in cherishing certain really precious religious characteristics, orderliness and decency in worship and ritual. As an illustration of this, Fowler refers to the "lustratio"- the slow and processional movement in which the old Romans delighted, and perhaps the original source of processions in Christian worship, and such ritual as is connected with the measuring and marking off of city boundaries. Another illustration is the tender and reverential care for the resting places of departed relatives.

Finally, he refers, to the influence of the Roman religious spirit, as distinct from its outward form, on Christian thought and literature in the Western half of the Empire.

Enough has been said to show the wide field of research that is open to us, and to justify an attempt to reconsider the influence of a part of this field upon the development of Christianity viz., the influence of Roman law upon the doctrine and life of the Church.

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IT is the design of the present chapter to trace indications of Roman Law in some of the parabolic utterances of Jesus. Readers of the New Testament know that the bulk of our Lord's teaching is clothed in the language of similitude. This mode of expression followed naturally from his imaginative temperament, his nationality and his early training in the Old Testament. It is outside our purpose to dwell on the many metaphors, and various figures of speech scattered here and there over the whole extent of his utterances; it is our aim to confine ourselves to the consideration of a small selection of the parables. The parables in general form the most picturesque, attractive and popular portion of the teaching of Jesus. They not only contain valuable truths and principles concerning Christian doctrine, but they afford us vivid glimpses into the contemporary times of Jesus. They preserve for us in a delightful literary form, many of the different customs and manners in vogue during the early part of the first century. Little do we know of the early years of Jesus. Of the period between his twelfth and thirtieth years we know nothing. Concerning this period, however, there has been no lack of speculation, apocryphal and otherwise. Whatever He might have been doing during that time, it is very certain that He could not have spent his days idly; for even the parables themselves, to say nothing of the remainder of his utterances, bear witness to a mind of transcending powers of observation, and a mind which thought and reflected profoundly on all that it observed. During that unrecorded period He must have kept a seeing eye on the changing moods of Nature and her seasons, and joined in the intercourse of men, and taken a lively interest in the daily happenings and amenities of social and work-a-day life.

Thus He grew in knowledge and wisdom in the most practical sense; while the work of His Father was the supreme motive, at the back of His ordinary psychological processes. Only a type of mind such as this could have evolved those parables which the four Evangelists record.

The analysis of the knowledge which he thus gained would yield signs of familiarity with some of the customs and traditions of Roman Law. This is an inevitable conclusion from the study of some of the parables. Certain elements contained in them can be understood only by reference to that law, and our present task is an attempt to point out those elements, and to say something about them.

As will appear later, the subject-matter of some of the parables leads us to an acquaintance with certain legal enactments concerning ownership of property, loans, debts, procedure at law-courts, the respective positions of creditors and debtors, and other questions. These different matters we cannot deal with, either severally or in detail. They will be touched upon slightly, just as they happen, in the parables to be considered in the course of the chapter.

In the matter of ownership, for example, Roman Law has the following classification; (a) things which belonged to all in common; (b) things which belonged to no one; (c) things which belonged to individuals or corporations. Things which belonged to all alike were the air, running waters, the sea and the sea-shore. All rivers and harbours were public property, and all persons had a right to fish therein. Anyone might build a house on the sea-shore for the purpose of retreat, or be allowed to haul up his nets from the sea and dry them. Some of the first disciples enjoyed this legal right before they were called to be "fishers of men", and even afterwards.

The things that belonged to no one (b) were things sacred. All things subject to divine law were the rightful possessions

of the gods. They had been consecrated to the gods by the priests. Among them were churches, votive offerings, etc. These things could not be pledged except for the redemption of captives from bondage. The ground, for example, on which a sacred building had been erected, remained sacred even after the building perished. Again, a dead body buried in the earth rendered that piece of ground sacred. Lastly, city walls and gates belonged to the gods, and anyone damaging them had to suffer the extreme penalty of the law.

Things which belonged to individuals or corporations, (c) became legal property in divers ways, by finding, <sup>we?</sup> captivity, buying, etc. Birds, fish, wild animals, that is to say, all creatures inhabiting sky, sea and land, became the property of their first finder or captor. "The Romans had no game laws, which in England grew out of feudalism and the great forests of the Norman kings and nobility." (Moyle's JUSTINIAN'S INSTITUTES.) Thus it appears that one method of annexing things which once belonged to all alike was by using force for their capture. Hence the possible reference to this mode of establishing ownership in St. Matthew Xl. 12. where Jesus speaks of the kingdom of heaven as suffering violence, and of violent men taking it by force.

Let us now proceed to examine a selection of parables, taking them as they may occur to us.

(1) The parables of the HID TREASURE, and the PEARL OF GREAT PRICE. (Matthew Xl. 44-46.)

The Romans termed a treasure-<sup>t</sup>rove, ~~thesauros~~, and by it they meant a treasure which had been hid for so long a time that its original owner became unknown. When such a treasure happened to be sought and found, its value, according to law, was equally divided between the finder and the owner of the land in which it had been concealed. It was no question of lost property. Losing property through accident or carelessness does not mean losing the rightful ownership. In English law, the finder of a

lost article is bound to take all reasonable measures to restore it to the owner (if known), or hand it over to the police, otherwise he might be liable to the charge of stealing by finding, and punished accordingly. After a certain time, however, should the real owner make no claim, the article is returned to the finder. But the *thesaurus* was considered to have no owner, and if the finder came upon it by mere accident and not through seeking for it, it became the sole property of the owner of the land. Later on in the legislation of Rome, the treasure found became the property of the crown, or, in the days of the Empire, of the Emperor. Such is English law. We, however, read that by the special grace of Emperor Alexander, the *thesaurus* was permitted to be kept by the finder.

Although Roman civilization had attained to a high standard, personal property was far from being safe; hence the anxiety and fear of persons concerning their property when going a long journey from home. If they left it behind them exposed, it might be captured by a rowdy mob; if they took it with them they might be attacked by <sup>pirates</sup> sailors or brigands.

After the destruction of Jerusalem, the Romans, knowing that the Jews had hidden many of their treasures in the earth, diligently dug them up for the purpose of finding them. It is not difficult, therefore, to understand why a person, who had found a treasure in the ground, purchased the field to which that piece of ground belonged, for only by so doing could he have become the sole owner of the treasure.

The Parable of the Pearl of Great Price is a fitting companion to the one just noticed, and is much like it in principle. The very choicest of precious stones then, as now, were valued at fabulous sums of money.

## (2) THE PARABLE OF THE UNJUST JUDGE - Luke XVIII. 1-8.

That this parable has its setting in some form of legal procedure is obvious enough. What precisely may have been the nature of the woman's suit is not so obvious. She had clearly a grievance against someone from whom she sought redress. Her language, as originally spoken, suggests that she petitioned for the restoration of property from her adversary. Our English version does not convey the exact meaning of the original. The Greek *ἐκδίκησον* is not correctly translated "Avenge me", but the Vulgate renders it in the proper way in "Vindica me". VINDICATIO was a term used in Roman Law for the procedure by which an owner sought the recovery of stolen property. In the present case the woman sought an ADDICTIO, that is, an award of the judge in a JUDICIUM LEGITIMUM. Justinian defines "vindictio" thus:-  
"We call a real action a 'vindication', and a personal action one in which the contention is that some property should be conveyed to us. To call a personal action, in which the plaintiff contends that the defendant ought to convey to him, a vindication, is in reality, an abuse of the term."<sup>(1)</sup>

The important plea of the widow might suggest that she had been left by her husband in straitened circumstances, and being thus handicapped, she was naturally eager to enjoy the rightful benefit derived from any portion of his estate then in the wrongful possession of her adversary. The action of the judge in postponing her case throws a side-light on the position of women at that time, and particularly widows. They suffered under many disabilities, legal and otherwise. Women, for example, were not allowed to perform certain legal acts without the authority of their tutors; they could not be appointed heiresses when the testator had above a certain amount to bequeath; they were prohibited from being legatees to a greater extent than half the estate.

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(1) "Appellamus autem in rem quidam actiones vindicationes...."



As to the judge in the present instance, his office did not correspond to our modern notion of it. According to Roman Law he was not a magistrate, but a private citizen invested by the magistrate with a judicial commission in each case to be tried, and that only. Originally he was chosen from the senators, and afterwards from the official list of selected judges made up of persons whose qualifications varied at different times. He would answer to what we now might call an arbitrator, to whom a case is referred by a court for decision. This idea is implied in the answer Jesus gave to the man who said to Him: "Master, bid my brother divide the inheritance with me." Jesus answered, "Man, who made Me a judge or an arbitrator over you?" In such a case that individual should have applied to the court, and secured an officially appointed judge to give legal decision.

(3) The Parables of THE TALENTS (Matt. XXV. 14-30) and THE POUNDS (Luke XIX. 12-27.)

Such, in general, is the resemblance between both these parables that they may be regarded as different versions of the same thought. Taken together they form a subject which offers some difficulties in ascertaining elements bearing on Roman Law. It may be that they were suggested in part by actual historical events known to our Lord. It would be interesting to compare certain incidents in the parables with the history of Herod the Great and Archelaus as given by Josephus. (cf. Antiquities, Chapp. XLV. and XVII.) In the narratives of Josephus we read that various members of Herod's family had gone to Rome to sue for a government and the title of king. They plotted against each other, and tried to damage each other's cause by accusations of disloyalty on their part towards Rome. A deputation of fifty ambassadors, supported by eight thousand resident Jews in Rome, had been sent to that city from Palestine to protest against Archelaus being set over them as king, as he had already assumed the title and exercised its authority, and had impoverished Judea, and slain many of the

nobles. Archelaus, according to Josephus, appointed Philip, his brother, to take charge during his absence, and placed certain castles under the charge of various supporters, and on his return rewarded those servants who had been faithful to him.

Be the connection between the parables and this historical event what it may, the main interest of the two gospel stories, however, centres on the slothful servant, because he had neglected to make the right use of the talent or pound entrusted to him. He should have taken the money to the exchangers or deposited it in the bank on interest.

Public banks and private financial firms were scattered over the Graeco-Roman world. CREDITUM was the term applied to a deposit on interest. The money lodged in Roman banks about the end of the Republic and the beginning of the Empire must have been very considerable. The rate of interest from Cicero's time to that of Justinian was twelve per cent. per year. Justinian reduced and varied it according to the quality of the person or the nature of the loan, but compound interest was forbidden.

The sole reference of Jesus to banking and interest is to be found in the parables under consideration; but there is an apocryphal saying by Him which may be connected with these parables. Origen cites it as Christ's: "Be ye tried money changers", or "Show yourselves approved bankers." The Clementine Homilies explain this to mean that Christians should prove the words of Christ, as bankers test and approve the gold and silver on their tables. An approved banker must have skill to detect counterfeit coins, for they were in circulation even in those days.

One further remark on the Roman Law of Contracts. Two important terms were in use in this connection, viz., MUTUUM (loan) and DEPOSITUM (deposit). The first was a gratuitous loan of things consumed by use, and free of interest, but the borrower was obliged to return things of the same nature, both as to ~~quality~~ quantity and quality. The second term referred to an object

entrusted to another for safe custody without remuneration, and to be returned on demand. The depositary had to take care of the thing deposited with him as if it were his own. He was liable for any fraud or gross negligence. The depositor had to pay all expenses incurred, and make good any loss, occasioned in respect of the object deposited. There was, however, a striking difference between the two transactions; the loan was a contract in the interest of the borrower, while the deposit was made in the interest of the depositor.

(4) The Parable of THE UNMERCIFUL SERVANT. (Matt. XVIII. 23-35).

Here we have a glimpse of the Roman Law of Actions, especially in the recovery of debts, as well as a reference to the Republican system of farming taxes. In this parable the contractor or farmer was the satrap or king of a province, and he would conduct business in his own way. He had to pay the stipulated sum to the Imperial Treasury at Rome. He would appoint agents and collectors in the various districts, and recoup himself by cruel extortion from the people under his rule.

According to the ancient law of Rome, execution was in principle, personal laying of hands by the creditor on the debtor - a kind of taking the law into his own hands. It resulted in making the debtor a slave, and the creditor had a right to see<sup>it</sup> him across the Tiber, or kill him. Further, the creditor had the right to bind the debtor, and cast him into chains. After having thrice publicly invited someone to come forward to release him, and no one appearing in response, the creditor, after a lapse of sixty days, might regard him as his slave and sell him into a foreign country. If several creditors had claims upon debtor, the law allowed them to cut them into pieces, and it enacted that a mistake in the division in no way prejudiced their rights. Later, the law passed by Papirius<sup>us</sup> abolished the right to sell or kill a debtor. Nevertheless, bondage or imprisonment, until the debt was paid, continued to be the feature of civil law, and was in force in the days of Jesus. When the person of the debtor,

placed in the position of a slave, passed into the hands of the creditor, the same fate happened to his estate and family and those under his power, viz., wife, children and servants. It should also be remembered that when the contract was made, the debtor had pledged his own person, or rather his personality and all pertaining to it, for the debt; so the purpose of execution was not merely to satisfy the creditor, as nowadays, but rather to punish the debtor by taking from him what he had pledged.

We have in the Sermon on the Mount (cf. Matt. V. 25.) a direct reference to the law of procedure in case of debts, that is, "Agree with thine adversary (the plaintiff) quickly ..... etc." The words seem almost an exact paraphrase of the Laws of the Twelve Tables:- "If a man summon another into court, he must go. If he go not, let witnesses be called; in that case he may take him. " - (Law 1. Table 1.)

The figure is from the Roman procedure in a civil court. In Law it is known as "In jus vocatio". Roman Law, however, allowed the dispute to be settled by the "Transactio in via", so that the debtor need not be dragged into court.

Deissman has the following note on Luke XII. 58 :-

"For as thou art going with thine adversary before the magistrate, on the way give diligence to be quit of him."

"To give diligence is generally explained as a Latinism and, according to Wetstein, is found only in Hermogenes. But the same words were used in reading a decree of the Roman Senate in 81 BC. It is possible, of course, to maintain that the phrase is here imitated from the Latin original, but a Roman document dated 2 B.C. has the imperative just as Luke uses it, and so it shows that the phrase was in use among the people, who no longer felt that it was a Latinism. And in the previous verse, to give right judgment was a common phrase in the Roman Courts. So Jesus advises those who go to law with one another not to wait for the judge to speak, but to become reconciled beforehand, and so put an end to the dispute by pronouncing 'just judgment' themselves."

If the debtor did not avail himself of this opportunity, he would be haled before a judge, and the matter would be carried through to the bitter end. Let it be observed that the creditor could use force without incurring liability thereby.

The Praetor carried the law a step further. He ruled that disobedience to a summons, or any attempt at rescuing the summoned party, or ~~aiding~~ in any way his escape, was an offence. In these procedures of early Rome the cruelty of legal actions is obvious enough. In a broad comparison between modern legal systems and those of early Rome, we discover something of an antithesis, namely, that in the former the maxim is true that "where there is law there is a remedy", whereas in the latter, we have its converse, that is, "where there is a remedy there is law."

In the light of the foregoing remarks we understand the drift of the second part of the parable in question, particularly in the action of the servant who sought the money owing to him by a fellow-servant. The two servants are respectively creditor and debtor, according to law, and the creditor resorts to the customary methods with regard to the debtor. That is, "he laid hands on him, and took him by the throat, saying, "Pay me that thou owest."

(5) The parable of THE UNJUST STEWARD: Luke XVI. 1-9.

Here we have the story of a certain rich man who kept in his employ a steward into whose hands he entrusted the management of his estate. But the servant wasted his master's goods, and was called upon to give an account of his stewardship, and was dismissed as a result.

The duties and responsibilities attaching to the office of a steward figured in Roman Law. Agency or stewardship, in the modern sense, was not possible in Rome for centuries, but when at length ~~the~~ the office became necessary, it was regarded as one carrying with it grave responsibilities. During the Empire

its position was conspicuous in the law of obligations. This naturally followed on the expansion of the Empire, when it became necessary for the Emperor to appoint men of reputed trustworthiness to represent him in the provinces. The term Procurator has a wide meaning. Generally, we understand by it, an agent who represents another, and under his authority, as an attorney or advocate in an action. An abbreviated form of the term is our English proctor - a functionary known at universities. The term, moreover, signifies a steward, manager, or bailiff, one who takes charge of the affairs of another. Such is the sense it bears when applied to the man who served the lord of the vineyard ~~a~~ steward; (cf. Matthew XX. 8;) and as applied to Chusa, who was Herod's steward. The legal term for extreme care which a steward had to take in regard to things entrusted to him was "Diligentia". He had to show even more care than if such things were his own property. Any remissness of duty on his part made him liable to action at Law. The idea is pointedly expressed by Jesus in Luke XVI. 11. 12. "He that is faithful in the least is also faithful in much." Again - "If therefore ye have not been faithful in that which is another's, who will give you that which is your own?"

Belonging to the chief duties of a steward was the proper <sup>Execution</sup> ~~execution~~ of his commission, wherein he was to show the greatest care and diligence, and which he was to carry out in his own person, unless through implied or expressed authority he might delegate the trust to an agent of his own appointing, in which case he was responsible for any shortcomings on the agent's part. Furthermore, at the expiration of the commission, he was to return to his master all monies and values entrusted to him, and to render a full and true account of receipts and expenses - "to give an account of thy stewardship." The <sup>penalty</sup> ~~penalty~~ for a defaulting steward was called "Infamia", which meant loss of civic reputation and certain political privileges. He was disfranchised

for example. Under the Empire, he was excluded from public offices, and in legal transactions he was not allowed to act as a witness. The unjust steward of the parable was well aware of the consequences of negligence; hence his anxiety to obviate the infamy which would justly be attached to him. Our Lord, of course, praised the unjust steward, in that he did the best he could by his calculating prudence for himself. St. Paul, versed as he was in Roman customs, takes several references to worthy stewards. "A bishop", he says, "must be blameless as God's steward." (Titus. 1. 7.) Again - "Let a man account of us, as of ministers of Christ, as stewards of the mysteries of God. Here, moreover, it is required in a steward that a man be faithful." (1 Corinthians. IV. 1. 2.)

In the foregoing remarks we have endeavoured to point out in the few parables briefly considered, certain elements in the legal customs of Rome. Such elements might be multiplied by extending the field of our study so as to include all, or almost all, the parables, and by dealing with them according to a more analytic method than that attempted in our previous remarks. Enough, however, has been said to indicate the legal background of the parables in general, and this fact reminds us of what was stated on the threshold of the present chapter, namely, that Jesus brought a seeing eye to bear on nature, men, and things, and that the results of His observation are manifest in His incomparable parables. Since Rome had impressed itself in manifold ways on Palestine, and particularly in Galilee, in which region He probably spent the earlier and greater part of His life, it is only natural to think that Roman Law, customs and traditions would give colour to His mentality, and reveal themselves in His spoken words, as they certainly have done in the parables.

THE RELATION OF JUDAEA TO  
SYRIA AND ROME.

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Chap *III*

THERE has been a diversity of opinion as to how Pilate stood related to Rome and Syria. Was he directly responsible to the Emperor, or was he simply a subordinate to Vitellius, the Governor of Syria? There is no doubt that the latter had a very considerable influence on the internal administration of Judaea, from the time of its subjugation by Pompey to the year in which Herod was appointed client king. We know that it was Vitellius ultimately who recalled Pilate to Rome to answer charges made against him by the Jews. It is not an easy matter to settle the exact relationship, for the terms of the treaty between the Jews and the Romans have apparently not survived. The writer, however, is of opinion that Pilate was responsible to the Emperor, and is in agreement with Professor Husband when he says, "In turning to a study of the judicial powers of the procurator of Judaea, it is first of all necessary to protest against a view which has become all too common of late in the treatment of the trial of Jesus. The erroneous theory is rapidly becoming current that the procurator did not possess independent jurisdiction, but had the power to hold court only when delegated to do so by the Governor of Syria."

"Apparently this view was started by Rosadi in 1905, but it has been repeated diligently by the majority of writers since that date."<sup>(1)</sup>

Rosadi <sup>(2)</sup> affirms that no procurator possessed jurisdiction of any kind unless he received some form of delegation from a superior officer. In the case of Pilate that superior officer would be Vitellius, the Governor of Syria, and the assertion is made that Pilate could not have conducted a case against any

(1) Husband, page 173.

(2) Rosadi: "Trial of Jesus", page 142.



defendant until that right was granted to him by Vitellius. It seems that this mistake has arisen from certain statements occurring in the Roman civil code, compiled under the direction of Justinian between the years A.D. 529 and 533.

According to this code, a procurator must not hear cases unless delegated by the provincial governor, and in this situation the procurator acted in the capacity of vice-governor of the province. But Justinian compiled his code five hundred years later than the reign of Tiberius. As Husband points out, "The word 'procurator' was used in two different meanings. In the time of Justinian no distinction was made, for all procurators had but one function - they were financial agents in the provinces, and were subject to the direction of the governors. At the time of Augustus and his immediate successors, however, the Empire was still being organised and new sections were constantly being added. Some of these sections were extremely small, but for various reasons it did not appear advisable to incorporate them in already existing neighbouring provinces. So they were given their own governors, whose position was not sufficiently exalted to merit the fine title, 'Legatus Augusti', but seemed to call for a less high-sounding name. Such governors were named 'procurators', although the same word was already in use to designate the financial agents of the government in other provinces. The procurators of Judaea belonged to this class."<sup>(1)</sup>

We consider that Husband has proved his point that Pilate had independent jurisdiction and not when delegated to do so by the Governor of Syria, and that Rosadi is not accurate in his statement that "Pilate was only a procurator or financial controller of the imperial administration in Judaea."

Rosadi further adds, "But in the small provincial districts such as Judaea, only a procurator was sent who was under the control of the president or governor residing elsewhere. The procurator acted as substitute for the governor in all matters

<sup>(1)</sup> Husband. p. 178.

including judicial cases, with the rank and title of vice-president."

Rosadi, in order to establish his position, refers to Cujacius who makes this remark in his commentary on the case of Pontius Pilate, "On the procurator of Caesar is conferred jurisdiction in pecuniary <sup>and</sup> fiscal cases, but not in criminal cases, unless when acting as vice-president like Pontius Pilate, who was procurator of Caesar and vice-president of Syria."

It is our opinion that Rosadi and Cujacius are dealing with things as recorded in Justinian's Roman Civil Code and not as they were five hundred years previously in the days of Tiberius.

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## THE ARREST OF CHRIST.

After Jesus had kept the Passover and instituted the Lord's Supper in the upper room, He and His disciples wended their way to the Mount of Olives. Crossing the dry, sandy bed of the Kedron, they entered a garden in which was a crushing press, and which on this account was called Gethsemane. Here Christ was arrested on Thursday night - in the month of March towards the end of the Passover week - Nisan 14. according to the Hebrew calendar.

The question has been raised whether the arrest was legal. Mr. Taylor Innes thinks "there is no reason to doubt that it was by authority of the High-priest; and the addition of a Roman speira to the officers of the temple must have been procured by Jewish authority." Rosadi does not agree with this view, and believes that "in no case could the arrest made at Gethsemane proceed from an order regularly given, for the simple reason that the Sanhedrin had no power to issue it." None of the Evangelists mentions any formal order of arrest given by the Sanhedrin, but only the intention of the priests and scribes to seize Jesus by surprise.

We are concerned in this thesis with Rome's relation to the arrest, and feel persuaded that Mr. Taylor Innes is not likely to be correct on the point that the High Priest had requisitioned the help of a Roman speira. It is only the fourth gospel which speaks of the "band" (σπεῖραν) - vulgate "cohors," and the "chief captain" (χιλιάρχος) - vulgate "tribunus." The word σπεῖρα does not necessarily imply a Roman armed band, nor is χιλιάρχος always and exclusively used in the technical sense. Judging from the statements of the Synoptists, Brodrick thinks that "the band and chief captain" may be taken to imply the temple police or guard (ὑπηρέται) recruited from the ranks of the Levites with their commanding officer (στρατηγός).

"If you accept the terms σπεῖρα and χιλιάρχος in their technical sense you are brought face to face with the ludicrous spectacle of a dignified Roman tribune in all his war

## THE ARREST OF CHRIST.

-2-

panoply at the head of a cohort of six hundred men, helping the temple police and a Jewish rabble to hunt by torchlight in a garden for an unarmed and unresisting man. Which thing is incredible. Besides the very last thing desired by the Sadducean element would be that at the Passover time any idea of a tumult in Jerusalem should come to Roman ears. St. Peter's unwise and impulsive act would at once have resulted in his being bound and carried off a prisoner, had the 'band and chief captain' been Roman officials, for punishment speedily followed resistance to imperial Rome. In all probability, "the band" sent to arrest Christ were the Shoterim - (ὤπηρέται) - officials of the same nature as those who were sent to arrest Him during the Feast of Tabernacles. " (Broderick p. 28, 29.)

There is no doubt that if our Lord had been arrested by the permission of the procurator and with the help of Roman soldiers He would have been "put in ward" in the Castle of Antonia until the next day, and then sent before Pilate. Loisy draws the same conclusion from a totally different line of argument.

Mr. Taylor Innes voices the general opinion as represented in pictorial art from the earliest times to modern days, that the band sent from the Jewish temple to arrest Jesus included some Roman soldiers. But with every respect for the authority of critics and distinguished artists, who, moreover, had no means of verifying this historical detail, we believe the opinion to be erroneous - an opinion founded on an expression of the fourth Evangelist alone.

Further, we cannot believe that these armed men were Roman soldiers when we read that there were staves as well as swords among the weapons carried. No doubt Judas got his escort from the chief priests and Pharisees, and they had no control over the Roman soldiery. Moreover the Greek word *σπῆρται*

## THE ARREST OF CHRIST.

-2-

which is translated "cohort" means an armed band, and not a special detachment of the Roman army.

We may add as an additional reason that there was no Roman intervention at the arrest, the feeling of surprise so strongly manifested in Pilate's demeanour on the appearance of Jesus before him, and above all, his obstinate resistance to the capital charge and the Jewish demand for the death sentence.

The words of Rosadi seem to us conclusive on this matter. "A centurion, a Roman military rank not unknown to the Evangelists, would have been too much to expect in such surroundings, if even as many as a hundred Roman soldiers were there. And by whom could the services of this centurion have been applied for, and who would have commanded him? Did the chief priests request him from Pilate? This must be presumed by anyone who supposes that the Roman authority intervened in the events of the evening of Nisan 14. in order to preserve public order, but the supposition is arbitrary and absurd. It is arbitrary because there is not a word in the New Testament of any Roman intervention with such an object, whereas any instance of Roman interference when really occurring, is mentioned with no lack of detail, from the moment that Jesus was taken before Pilate to the end; and it is absurd, because if the Jews had not the power of arrest and inquiry for capital offences, as has been already stated and proved, it would have involved a juridical contradiction had Roman aid been lent to an executive act which would have ignored and usurped the exercise of their own judicial power."  
(Rosadi p 122.)

As far as the arrest was concerned, we are persuaded that our Lord, as a Subject of the Emperor, was not brought into contact with Roman law and power.

THE TRIAL OF JESUS CHRIST BY PONTIUS PILATE.

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It is admitted by all who rightly interpret great men and great events that Jesus Christ is the central fact in history.

It is further admitted that the three greatest forces resident in Him are His incarnation, death, and resurrection. Of these three ~~faces~~ the greatest factor in His world influence is the tragedy of His death - a death brought about as the result of a judicial trial, conducted by a representative of that Rome which was universally regarded as the teacher and mother of law.

This trial must for ever stand out as one of the greatest landmarks in the history of the world, for the prisoner was a personality without parallel in the history of the ages, and became not only the creator of western civilization, but the object and recipient of peculiar honours and adoration by all subsequent generations.

It is quite evident that inasmuch as we are dealing with a trial in a court of law, the subject should be treated in a judicial spirit, with resolute dispassion, and without bias.

Many authors have approached the trial in a devotional or theological spirit, with leanings towards the traditional view, and burdened with pre-conceived notions.

We must firmly set on one side horror at the tragedy, and compassion for the prisoner.

Our historical data will be the four Gospels, the only authentic contemporaneous records we have at present, and we assume, of course, that the record of the trial and crucifixion is a real and historical record made by four different sacred ? writers who were contemporaries of Christ; and further, that the direct references by classical authors to the events and their immediate and striking sequences are real and historical references. We will accept as genuine two direct classical allusions to Jesus Christ, those of Josephus the Jew, and Tacitus the Roman. We will dismiss the indirect references to the Founder of the Christian religion by Suetonius, Lucian, Pliny the Elder, and Epictetus.

Josephus says: "At that time lived Jesus, a wise man, if he could be called wise. He did marvellous things, and was the master of those men who received the truth with joy. He, moreover, brought over many Jews to his side, as also many foreigners of the Greek countries. This was the Christ. When, on the accusation of the most influential men among us, Pilate sentenced Him to death on the cross, His followers nevertheless did not forsake Him. He appeared among them on the third day, because Divine prophecies had foretold of Him this and many other miracles. Up to the present time the Christian sect - so called after Him - has not ceased to exist."

(Antiq. ped. XVIII. cap. 1V.)

Tacitus says: "In order to quiet the report, Nero accused and punished with the most refined tortures those who with perverse obstinacy called themselves Christians. The author of this name was Christ, who, during the reign of Tiberius, was executed by the Procurator Pontius Pilate." (Ann. XV. 44)

We accept these two references as genuine and historical, though they have been called in question and sometimes denied by critics sceptically inclined. In regard to Tacitus, for example, not only do they maintain that the reference to Christ's resurrection, as the second last sentence of the

execution under Pontius Pilate is an interpolation, but they go so far as to claim that the whole of the "Annals" is the work of another hand - an Italian named Poggio Bracciolini.

( (1) Lord Shaw of Dunfermline - "The Trial of Jesus Christ" pp. 6.7.)

Viewing the four gospel accounts side by side, and adding to them the references in the book of "Acts", a dispassionate man will be impressed, as one accustomed to weigh evidence is invariably impressed with one fact which is common, and in such cases inevitable, viz., to quote Lord Shaw's words, "that while there may be great variety in detail, or in the forms of expression, or in the narration of occurrences, or in the accent put upon incidents - all according to the light in which they have struck the writers' or the witnesses' memory or reflection - yet underneath all these things, the substance and weight of the narrative are true. In the case of the trial of Jesus Christ the simplicity with which events of stupendous importance are told, arrests and holds the mind, making an indelible impression, and leaving an abiding sense of the realism and veritable fact of the most tragical incident in all human history." (1)

( (1) Op. Cit. pp. 7,8.)

The late Mr. Taylor Innes, a Scottish advocate, has stated that "the incidents of the trial are most natural and probable, and in so far as the traditions agree, there seems no excuse for doubting the history. Of course, the four do not agree in all details, here or elsewhere. The variations in the utterances reported by different gospels warn readers to expect a similar independence in narration of facts. And sometimes this cuts deep into the history as in the matter of chronology." (1)

( (1) "Trial of Jesus Christ" by A. Taylor Innes. P.5.)

Professor Husband, in his book "The Prosecution of Jesus", states that "the accounts of the trial of Jesus before Pilate, as contained in the four gospels do not offer by any means the same kind of difficulty that is encountered in the examinations of the descriptions of the hearing by the Sanhedrin. In the



narratives of the events of the night and early morning, it is extremely hard to reconcile the accounts of the evangelists, and if an attempt is made to gather them all together into one harmonious and consistent piece of narration, one meets with contradictions that seem impossible to explain. Nor is any one narrative taken by itself quite convincing. The records of the trial before Pilate, on the contrary, can generally be accepted even to minute details as quite in accord with ordinary procedure. But the most obvious fact connected with these accounts is that no one of them is complete in itself. Occasionally they seem to require a slightly different arrangement, but while much could have been added with profit to our understanding of the whole course of events, it is quite unnecessary to subtract any essential part of the narrative, on the ground that it is inherently or palpably improbable. Hence one's attitude toward the records of the two hearings must be very different. A connected story of the earlier hearing cannot be gained by inserting details out of one account into another, but in a reconstruction of the story of the trial before Pilate, a combination of the narratives of the four gospels yields a very satisfactory result. And yet even this leaves certain things untreated, the most important of which is that no one of the four states that witnesses were, or were not, summoned to give evidence. For this phase of the trial it becomes necessary to depend upon the apocryphal book of the Acts of Pilate, and to draw from it some idea of the nature of the evidence offered."

(Husband: pp. 234, 235.)

It is beyond the scope of the present thesis to deal with the proceedings before the Sanhedrin, except in so far as they relate to the trial before Pilate. Indeed one cannot call the former a trial, for the only trial court in the province was that of the Roman Governor. The hearing by the Sanhedrin was quite legal, for it was merely a preliminary

hearing - a kind of grand jury proceeding, to draw up an indictment to present to Pilate, and not in the nature of a formal trial at all. Had it been a criminal trial, it would have been illegal, owing to several irregularities in the mode of procedure; but an investigation as such does not call for the application of the rules which obtain in a criminal court, and particularly in a court which had passed out of existence as a trial court in criminal cases many years before this time.

Those writers who think that there was a formal trial of Jesus before the Sanhedrin are naturally confronted with many irregularities in the conduct of the case. According to Hebrew law the time of the proceeding - during night, and also during the festival of the Passover - was illegal. Then the place of the trial, given in some of the accounts as the High Priest's house, was contrary to Jewish law. It was also contrary to law for Caiaphas to question the accused and found his condemnation on the answers of the accused, and also, a trial for life should be postponed for condemnation to the next day. There was, moreover, an element of haste and abruptness which stamped the whole proceeding as a formal trial with infamy. Since, however, we consider the proceedings in the Jewish court as not of the nature of a trial, but merely a preliminary hearing with a view of formulating an indictment for presentation to Pilate, the objections just mentioned were neither illegalities nor irregularities.

In defence of the theory that the proceedings before the Sanhedrin were simply preliminary and not of the nature of a technical trial, one cannot but be struck with the argument of Giovanni Rosadi in his "Trial of Jesus". "Is it admissable in fact, he asks, that there should be a division of one and the same judicial function between the power of jurisdiction alleged to have been retained by the Jews and the power of execution that was only exercised by the Romans? There could be no juridical

reason for such a separation. The judicial power is a close union of justice and force in such a manner that one cannot be disjoined from the other. In the political order there may be force without justice, but in the juridical order there cannot be justice without force, and in this order, knowledge is the sole title to and reason of power. Such justice would be a will without authority - a soul without a body. The principles of Roman law which were certainly not renounced when Pompey conquered Syria, determined the nature and connection of these two inseparable terms, force and justice, knowledge and power, jurisdiction and dominion." ("Trial of Jesus", by Giovanni Rosadi. p.144).

Many other distinguished writers have contended that the Sanhedrin had no legal right to try and pass sentence of death on Jesus - a contention which should receive our closest attention. As Rosadi says, "The sole authority that could try Jesus, arrest and examine Him and render Him amenable to the consequences of His alleged offence was the Roman procurator" (1) and he quotes Carmignani and Leman in support of his view. Dupin also maintains that the Jewish court had no right to try grave cases, or at least those of capital crimes at all; that their procedure was a usurpation.

Mommsen, on the other hand, declares that the Jews had every right to do so; and Salvador, the learned Spanish Rabbi, states "that the Jews retained the faculty of trying cases according to their own law, but it was only the Roman procurator who had executive power; no culprit could be executed without his consent." Maimonides and Rabbinowits are also of this opinion.

The belief that the Sanhedrin had the right to try criminal cases, although it did not have the power to execute its own sentences, is based upon two arguments: (1) That the Romans were more lenient in their treatment of the Jews than they were in their treatment of other subject nations; but the difference was not of such significance as to amount to the Jews receiving

(1) "Trial of Jesus" - Rosadi, p.142.)

special favours, as against other subject nations. For this reason, it is impossible to maintain that the Romans would display an inclination to break their established custom in the provinces by granting to the Jews the right to try serious criminal cases arising in their own nation.

(2) The second argument depends on existing evidence that the Jews did actually have courts and that these tried criminal cases of great importance. In fact it is claimed that the Sanhedrin heard criminal cases involving the death penalty even later than the time of the trial of Christ.

To refute this view we have but to recall the words of the Jews to Pilate: "It is not lawful for us to put any man to death."

(John XVIII. 31.)

(pp.153-181)

Professor Husband, in his book "The Prosecution of Jesus" has given a full and satisfactory answer to the foregoing argument, but it would take us too far from the purpose of this thesis to follow it here, since we are mainly concerned with the Roman trial. The conclusion we have arrived at, then, is, that there was but one trial, viz. the Roman; and this conclusion is based on two reasons, viz., first, that there can be no separation between the power of jurisdiction and that of execution; and the second is, that it was a fundamental principle in Roman jurisprudence that a person might not twice be put in jeopardy for the same alleged offence. The great Roman jurists, Paul, Gaius, Ulpian, Modestinus and Papinian, regarded this principle as fundamental, and to them is owing the fact that it <sup>is</sup> a guiding principle in the jurisprudence of all modern civilized nations. In very few works dealing with the trial of Jesus has this same principle been recognised, and not even in these has it been pressed to its only logical conclusion. No writer, fixing his mind on this principle, can well maintain that Jesus was formally tried before the Jewish authorities and then re-tried in a Roman court on the same charge. If it is held that the Jewish court

possessed and exercised jurisdiction in the case, it necessarily follows, as Husband points out, that the function of the Roman court was either simply confirmatory or appellate - a function scarcely in keeping with the dignity of Rome in its relation to a conquered people. The supposition that both courts had concurrent jurisdiction, and that a person could be arraigned before both on the same charge, would certainly be anomalous in Roman law. It would contravene the logical principles upon which the entire fabric was founded.

Certain writers have attempted to solve the problem of the two trials by juggling with the gospel stories in such a manner as to produce the impression that Jesus was tried on one charge by the Jewish court, and on an entirely different one by the Roman court. But that is merely to encounter a second barrier, while seeking to avoid the first.

The indictment drawn up by the Sanhedrin against Jesus contained three counts, given in order by St. Luke, namely:-

(a) We found this fellow perverting our nation:

(b) Forbidding to give tribute to Caesar:

(c) And saying that He Himself is Christ a King.  
(Luke XXIII. 2.)

Here we have a real indictment, and we are disposed to accept it as the form of accusation made by the prosecutors. Matthew, Mark, and John say nothing whatever about any part of this charge, except that Jesus claimed to be King. In view of this, some writers have thought that the last clause only of the indictment as given by Luke, formed the actual charge, and that this assumption brings into complete harmony the hearing before the Sanhedrin and the trial by Pilate. Professor Husband thinks this is quite possible, but that it is more probable that the other gospels have simply omitted the parts of the indictment that were of least importance to the Roman court. In the first count, as stated above, Jesus was charged with perverting (*διαστρέφω*) the nation, that is, "turning aside" or "twisting" the people from the normal course, and leading them in ways

dangerous to the authorities. "It was an effort to overturn the national religion and substitute for it something new. It was therefore an ecclesiastical offence. We know that the teaching of Jesus was not merely a continuation of Mosaic or rabbinical doctrine. Though He did not come to destroy the law, He clearly modified the prevailing Jewish ideas. It is difficult to understand why the most devout Christian should hesitate to admit that Jesus broke the Jewish ecclesiastical law, and in consequence deserved an honest condemnation at the hands of a people, whose whole criminal system had a theocratic basis. It is surely a grander thing to break the law gloriously in the interest of truth, than to abide by a code, now becoming obsolete, at a time when the world required a better code for its own true advancement. That is certainly a more inspiring thought than the assumption that the law was not broken, although the interest of civilization demanded that it should be broken."

(Husband: p.13.)

Pilate in a Gallio-like spirit cared nothing for the first count in the indictment. It did not matter one iota to Imperial Rome that a religious fanatic should pervert the Jewish nation. But though the first count was tantamount to an ecclesiastical offence, it might easily assume political significance, even in the minds of those who urged the charge. To the Jew, the meaning of the offence was purely religious, but to the Roman it might easily be political. "It could readily be suspected that the Sanhedrin realised the ambiguity of the language. But if we assume that Luke is giving the indictment accurately, we are stopped from making the claim that is so generally made, that the Sanhedrin falsified their findings when they presented the case to Pilate." (Husband: p.248.)

The second count in the indictment was that Jesus forbade paying tribute to Caesar. By all the canons of historical criticism this accusation is false. It was obviously too false to stand. It had already been brought up and disproved. It

was but shortly before, indeed, during Passion-week that Jesus had counselled his fellow countrymen to pay their taxes to the Empire, and to render unto Caesar the things that were Caesar's, making it quite clear that the kingdom over which He proclaimed Himself King was not to be established by means of the overthrow of the powers that be.

(Luke XX. 23-25: Matthew, XXII. 17-21:  
(Mark XII, 14-17.)

Luke says that they "were not able to lay hold of the saying before the people", suggesting that the emissaries of the Sanhedrin would have been pleased to interpret it to the disadvantage of Jesus, but that they found it impossible. The second count in the charge must be pronounced spurious.

The third count in the indictment is serious if true, for it was nothing short of "crimen laesae majestatis", i.e. treason against the Emperor. It was a crime which Tiberius punished most severely, and had even issued an edict concerning it, that verbal statements as well as overt acts were to be counted as treason, while to use the sacred name of Caesar was to give a yet more serious aspect to the case.  
(Tacitus Annals III. 39.)

Brodrick states that if Jesus had been a Roman citizen like St. Paul, the mere verbal accusation would not have availed against Him, as a case of treason must be attested by the production of the written libel; but not being able to claim, as did St. Paul, the privilege of "Civis Romanus", He, as one of a conquered nation, was defenceless, and could only trust to the justice of His judge. (i)

Professor Husband points out (page 250) that the third section of the indictment is not to be wondered at, that it was merely placing emphasis on one phase of the claim of Jesus - that He was the Messiah.

(i) Brodrick: "The Trial and Crucifixion of Jesus Christ of Nazareth." page 112.

He thinks that the accusation arises naturally out of the confession of Jesus, and especially out of the expression, "From henceforth shall the Son of man be seated at the right hand of the power of God." That would be sufficient, according to the same writer, to justify the insertion of this clause in the indictment and to justify the insertion honestly, provided the Sanhedrin honestly believed that Jesus was not the Messiah. "The claim to the Messiahship could be construed as either ecclesiastical or political, and the Jewish authorities who emphasised the political aspects of the claim, when they were trying to make their case valid in the opinion of Roman judicial officers, can scarcely be charged with serious impropriety." (Husband: page 251)

We know that the first aspect of the Messianic hope in the Old Testament is the kingly, preceding the prophetic and the priestly, and the Jews, we know, expected their Messiah to be a temporal king, <sup>who</sup> ~~that~~ would deliver them from the Roman yoke. If, therefore, Jesus asserted Himself to be the Messiah of the nation, it implied in their estimation, a claim to temporal power. We know, however, that the Jews had mistaken the character of the <sup>k</sup> Kingship of their Messiah. It was not a temporal but a spiritual kingship that Christ claimed, and it was when they discovered this that they turned as a nation against Him.

When Professor Husband states that the Jewish authorities who emphasised the political aspect of the claim when they were trying to make their case valid in the opinion of Roman judicial officers could scarcely be charged with serious impropriety, I must assert my disagreement with his view. The Jews were certainly convinced that Christ did not seek temporal power, and that He had no political designs. Everything He said and did tended to prove this. It was certainly serious impropriety to emphasise before Pilate an aspect of the case which they knew in their hearts to be false, but which they also knew would be the most likely course to secure the condemnation of Christ.



There were certain important formalities required in a Roman trial which Pilate faithfully carried out, viz.,

- (a) The Public Accusation:  
"What accusation bring ye against this man?"
- (b) He addressed to the prisoner the Interrogation:  
"Art thou then a King?"  
"Art thou the King of the Jews?"
- (c) The excusatio on the part of the prisoner was allowed:  
"My Kingdom is not from (EK) this world."  
"Now is My Kingdom not from hence."
- (d) The just verdict-absolvo was three times repeated:  
"I find no crime at all in Him."

There are many writers who maintain that the proceedings before Pilate from the point of view of Roman law were quite illegal, and in order to prove their point describe the elaborate and lengthy formalities of a trial in Rome.

"They contend that legally Pilate should have proclaimed to the multitude, by the voice of the public crier, a day on which he would consider the charges brought against the prisoner, summoning also his fellow-citizens to come together at the same time. On the day appointed the judge, in the presence of the prisoner, and in open court, should have announced the crime alleged against Him, a statement of which should also have been made in writing. The Sanhedrin would then have been required to produce their witnesses and the accused his, when the judge after weighing the evidence would have pronounced judgment in either of the following terms: *Ab<sup>s</sup>olvo* - *Condemno* - *Non liquet*, as the case might be. These writers emphasise the fact that it was not in Roman towns only that these regulations prevailed, but in the country districts and conquered provinces as well. This is undoubtedly true so far as the Romans were themselves concerned, but Jesus Christ was not a Roman citizen." (Brodrick: page 126.)

Brodrick here betrays an inadequate knowledge of many essential facts of the Roman criminal law and of the administration of the Roman provinces.

"When we apply Roman legal principles to the trial of Jesus,

we must not adopt the doctrines set forth in the Digest and the Codex of Justinian, on the assumption that the criminal law and the provincial administration of the time of Justinian's codification were exactly those which were in force five centuries earlier. There is no doubt a common misunderstanding of Pilate's position in Judea, and of the nature of his functions there. An error of still greater consequence is the belief, obviously held by many writers on this topic, that our knowledge of the extent and method of the application of the criminal law and of criminal procedure in the provinces is greater than it really is. We know in considerable detail the procedure required in criminal cases tried in Rome during that period, but we have only two cases reported from the provinces in any degree of fullness. These are the cases of Jesus and Paul, and even they are reported by men who were not thoroughly versed in either Jewish or Roman law. It is worthy of note that in the standard works on the subject of Roman legal procedure, those of Geib, Zumpt, and Greenidge, the procedure in provincial cases is not treated, for the very adequate reason that information on that topic is exceedingly scanty. But the omission is indicative of the belief shared by all students of the criminal law system of the Romans, that the law and the procedure adopted in the provinces differed decidedly from those in use in Rome. For this reason it is of <sup>no</sup> ~~an~~ advantage whatever to make a comparison between the proceedings before Pilate in the trial of Jesus and the procedure in criminal cases at Rome, when the purpose is to determine the validity or legality of the conviction of Jesus. The information concerning the provincial law and procedure which has come to light from the discoveries of papyri in Egypt, and was published in part by Wengert in 1902 and more fully by Mitteis and Wilcken in 1912 makes decidedly against the view that the Romans attempted to use their own Roman procedure outside Italy."

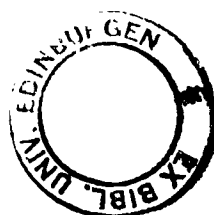
(Husband: pages 8 & 9).

It must have been soon after the presentation of the indictment that Pilate asked Jesus whether He was guilty or not guilty.

Mark reports the incident thus: "And Pilate asked Him, 'Art thou the king of the Jews?' This was the right and natural question, and the four gospels give it in identical language, a fact which suggests the accuracy of the Christian tradition. It was the ordinary question asked by Pilate, when seeking information about a fact, and not about a person. It is, however, not so easy to determine the reason for asking the question and its place in the trial. In a criminal court to-day it would be the correct and necessary question, and it is at this stage in the proceedings that the prisoner should be asked to plead guilty or not guilty to the charge. But the method of procedure was different in a criminal court at Rome. "There the initial step taken by the prosecutor was that he appeared before the appropriate Praetor and stated his case. Some days later both parties to the suit came to the Praetor, and the defendant was expected to answer questions. Among the questions was one on the main issue, namely, whether or not he had committed the deed he was alleged to have committed. Even if he admitted the act, he might still maintain its legality and the course of trial was not affected by the pleading of the defendant. After this meeting some days again elapsed, before the actual trial occurred. This procedure was impossible in the provinces, where the governor was forced to hear a large number of cases in a short time. It is probable that the whole procedure was so shortened that the pleading of the defendant took place at the time of the trial. If so, the question of Pilate was not only permissible but necessary."

(Husband: Pages 252 & 253.)

Husband also mentions that the only real parallel to it is found in the trials of Christians by Pliny in Bithynia seventy-five years later. Pliny, in giving an account of the trials to the Emperor Trajan, says that after the charge was made, he asked the defendants directly, whether they were Christians or not. If they admitted that they were, he proceeded with the trial. ( Cf. Pliny. Ep. X. 96.)



Christ's answers to Pilate's question as given in the three synoptic gospels is "ὁ βασιλεὺς", and it is generally agreed that this is tantamount to a reply in the affirmative. It is the equivalent of a confession. Comparing the four gospels, it seems as if this interrogation and reply must have taken place in the hearing of the chief priests and elders, who were accusing Him, some of one thing, and some of another. Pilate, in despair at getting at the truth of the matter, with all the confusion going around him, appealed to the prisoner Himself, and finally took Him into the Praetorium, where he could quietly investigate the charge. The judge again put the same question: "Art thou the king of the Jews?". Christ's answer when alone with the Procurator is most interesting. He first asks the judge a question: "Sayest thou this of thyself, or did others tell it thee of me?" In other words, Christ asks His judge: "Do you, as the representative of Caesar ask Me, if I stand here at your judgment seat guilty of attacking the Roman power, and claiming to be the King of the Jews in the place of the Emperor, or is it merely because others tell you I am King of the Jews that you ask Me?" Quite rightly Jesus wished first to know whether the charge was preferred by the Romans or the Jews, so that He should decide in what light to regard it in order to return a fitting answer. As to being a king in the pagan sense, there was no other answer for it but a direct negative, whereas "King of the Jews", as a phrase, might be construed either in a political or a religious sense, and the answer would in consequence depend on the quality of the questioner.

If the Roman governor asked the question of himself, it would naturally be in a political sense; whereas if he merely acted as the mouthpiece of the Jews, the question would bear a religious meaning, in which case Jesus could not disavow the title of King without denying His mission as the expected Messiah.

The Roman spirit is revealed in Pilate's further question, "What hast thou done?" He is anxious to get at the truth of the

matter, and subjects the prisoner to a practical test. He is not interested in the definition of terms; he cares nothing about the political opinions or the religious views of either the prosecutors or the defendants; Pilate is concerned about one thing alone, *namely, whether Jesus is guilty of committing treasonable acts*

Instead of answering the governor's questions in the affirmative or negative, the prisoner simply volunteers a statement:

"My Kingdom is not from (ἐκ) this world; if My Kingdom were from (ἐκ) this world, then would My servants fight, that I should not be delivered to the Jews; but now is My Kingdom not from hence."

Pilate therefore said unto Him, "Art thou a king then?" Jesus answered, "Thou sayest that I am a king." The first statement

of the prisoner was tantamount to an affirmative reply, but Pilate is anxious that there should be no misunderstanding or ambiguity on this crucial point, and so repeats the question.

It is evident to Pilate that the whole case turns on the nature of the kingdom to which the prisoner lays claim. The physical appearance of Jesus after the stress and strain He had undergone, and the ill-treatment to which He had been subjected, would be far from kingly, and Pilate could not believe that the accusation was made against Him seriously. It became clear to the

governor that there was no question of *Conflict* with Rome, ~~of~~ *or* of disloyalty to the mistress of the material world, but that the prisoner before him was a harmless, convinced, serene idealist. He had committed no crime, and He was no traitor to Rome. This doctrine of the soul and of truth had nothing whatever to do with any contravention of Roman law or any interference with Roman administration. So thinks Pilate, and it was quite evident to his prosaic and practical mind that this self-styled king was but the imaginary ruler of a phantom kingdom - a product of his brain alone. He might be a fanatic or a madman, or even both, but He was certainly no evil doer, nor was He plotting against Caesar.

The charge had broken down, Pilate was bound to acquit the prisoner, and he did so. (John XVIII. 38.) "I find in Him no fault

at all." The verdict was pronounced - a verdict of not guilty. Roman jurisprudence had done its task; it had acquitted Jesus Christ. Thus far the Procurator had been an absolutely just judge.

Professor Husband does not follow the majority of writers in taking Pilate's words, "I find no fault in Him", to signify a verdict of acquittal. He declares that to be quite unwarranted by the texts of Luke and John. In both of these gospels, the words of Pilate are identical, except that John uses a noun ( $\alpha\lambda\tau\epsilon\lambda\alpha\gamma$ ) where Luke uses the corresponding adjective ( $\alpha\lambda\tau\epsilon\lambda\omicron\gamma$ ).

The Revised Version translates the adjective of Luke "fault", and the noun of John "crime". The King James' version translates both passages "I find no fault in Him."

Bishop Westcott translates John XVlll. 38. "I find no charge or crime in Him."

We do not agree with Husband's conclusion that the new translation of the verse of John(XVlll. 38) is undoubtedly erroneous, and we accept with the Revisers and Westcott that the noun ( $\alpha\lambda\tau\epsilon\lambda\alpha\gamma$ ) in John XVlll. 38. signifies crime.

Concerning Pilate's statement, "I find no fault in Him", Professor Husband further says, "Pilate surely had heard Jesus confess that He was a King, and the confession would render Him subject to the operation of the Julian law of treason, for it tended to diminish the authority of the Roman government. It is furthermore quite incredible that he had not heard of the triumphal entry into Jerusalem on the preceding Sunday."

The opinion of the learned professor on this point does not commend itself to us. To arrive at a verdict formed in part on hypothetical grounds, such as that Pilate might have heard of the triumphal entry, does not betray on the part of Professor Husband much judicial acumen. Further, I find fault with the Professor in his reference to the Julian law of treason. Clearly, he does not mean a law passed in the time of the Emperor Julian, who ruled centuries later. I have no doubt Husband means the "Lex Julia" dealing with majestas, passed either by Julius Caesar or

the Emperor Augustus. The enactments of both are called "leges Juliae." (The Professor should not have changed the "lex Julia" into the "Julian law" because it makes for confusion.)

Again he says, on page 259. "Technically Jesus was guilty, but actually He was innocent of intentional guilt." I do not think Pilate considered Jesus either technically or actually guilty. There is no evidence to support the contention that he considered Christ technically guilty. Lord Shaw of Dunfermline in a letter to the present writer states that "Pilate knew technicalities as well as any man, and he knew the facts and pronounced Christ innocent."

Pilate thrice declared "I find no crime in Him". It was a verdict of "Not Guilty". Even if we admitted that Pilate did not formally acquit Christ, no verdict of "condemno" or "guilty" was ever passed upon our Lord by the Roman governor.

Pilate, realising the envy and fierce resentment of the Jews against the acquittal of Jesus, and being desirous of pleasing them, lest his own position be jeopardised, resorted to several expedients and subterfuges, all of which were destined to prove ineffectual.

1. Pilate, on finding that the prisoner was a Galilean, resolved to send Him to Herod, who had jurisdiction over that part of the country. This was a clumsy evasion of the procurator's responsibilities, according to Rosadi, from the point of view of either Hebrew or Roman law. "According to Roman legal procedure, jurisdiction resided in the Governor, not only by right of conquest in war, but competence was also vested in him on the ground of territoriality, always keeping in mind the nature and character of the offence alleged against Jesus. His prosecutors insisted strongly on His answering to a charge of "continuous sedition", as lawyers call it. The offence had its inception in Galilee and ended in Jerusalem, i.e., in Judea. Now it was a rule of Roman law which the procurator of Rome could neither fail to recognise nor afford to neglect, that the competence of a court territorially constituted was determined either by the place in

which the arrest was made, or by the place at which the offence was committed. Jesus had been arrested at the gates of Jerusalem, His alleged offence had been committed for the most part, and as far as the final acts were concerned, in the city itself, and in the localities of Judea. In continuous offences competence was determined by the place in which the last acts assumed to constitute the offence had been committed. Thus no justification whatever existed for referring the case to the court of the prisoner's origin. But this investigation upon a point of Roman law is to all intents and purposes superfluous, because either Pilate, when he thought of referring the case to Herod, intended to put aside his inalienable judicial power, or else he had no intention of abdicating his power, and in this case he ought never to have raised the question of competence between himself, Governor of Judaea, and Herod, Regent of Galilee, but rather between himself and the Roman Vice-Governor of Galilee - his colleague - if there had been such an one.

A dispute as to territorial competence can arise only between judges of the same judicial hierarchy. This act of Pilate, then, cannot be interpreted as a scruple of a constitutional character. It is but a miserable escape for his irresolution - a mere endeavour to evade his responsibilities and a temporising make-shift!

(Rosadi. page 250.)

11. The first expedient having failed, Pilate tries another, namely, to chastise and then release the prisoner. In this, likewise, he acted wrongly. If the prisoner was guilty, He deserved the punishment suitable to His crime, and scourging was no appropriate penalty. If He was innocent - and so He was pronounced to be - it was unjust that He should be scourged. According to the gospel record, the people were not satisfied with this proposal, and they manifested their feelings accordingly. This caused the governor at once to try another expedient. Had Christ, of course, been a Roman citizen, and not merely a Roman subject, Pilate would not have resorted to this second subterfuge, as all Roman citizens were exempt from scourging.



111. We now come to Pilate's third expedient.

On the day of the Passover it was the custom for the Governor to liberate a prisoner chosen by the people. St. Luke even asserts that the governor was under an obligation to do so; according to Matthew and John, however, the idea of a release seems to have been Pilate's own; according to Mark and Luke, it was the people themselves who recollected the custom and demanded that Jesus should be put to death, and Barabbas set at liberty.

It has been a subject of debate among New Testament interpreters whether the custom of releasing a prisoner on the day of the Passover was of Jewish or Roman origin. The majority have inclined to the former opinion, and some of them have gone so far as to see in the custom a symbol of the liberty obtained by the people of Israel in their exodus from Egypt, when the first Passover was celebrated. Search Hebrew law as we may, however, not a single provision do we find revealing the institution of mercy among the Jews. We must then seek in Roman law, according to Rosadi, for the judicial foundation of the prerogative which Pilate desired to exercise in favour of our Lord, and which the people claimed for the benefit of Barabbas.

"With the permission of those who persist in discovering so deep an imperfection in Roman law, as to regard it as a subject for historians and scholars exclusively, rather than for jurists, and insist upon understanding by Roman law, what in modern language is called Civil Law; with their permission we are bound to recognise that Roman legislation embodied all the rules which have been accepted by less imperfect systems of law, with regard to the extinction of the penal sanction. It is a fundamental principle, that the law which provides for the protection of society, should have the double sanction of prosecuting the crime, and of carrying out the punishment. But in every legislation there are admitted ordinary and extraordinary causes of exception, by which the development of the action by which the event is prosecuted is cut short, or the carrying out of the penalty is stopped."  
(Rosadi. page 259.)

IV. According to the fourth Evangelist, Pilate had recourse to a final expedient. When he had scourged Jesus - a course which he had already vainly proposed as an adequate punishment - he showed Him to the crowd from the tribune, endeavouring by this spectacle to excite their pity and their sympathy. Jesus had His head surrounded with a crown of thorns. He wore a purple cloak and bore on His person the marks of injuries and violence which had just been inflicted on Him by the soldiers of the Praetorium in the course of flagellation. Pilate stooped over the rail of the *βήμα* and stretching his arm towards the innocent prisoner cried, as if in sarcastic epilogue to the events of the morning: "Behold the man!"

According to Dr. Eger, one of the Papyri throws some light on this incident of the release of Barabbas. One of them refers to the decision of a Roman governor in Egypt, in which he leaves punishment out of consideration in the case of an accused person, and uses the words, "I grant you to the people." "It has long been a matter of dispute whether Pilate, in releasing Barabbas follows a Jewish or Roman custom, and this Papyrus offers an important point d'appui for the conclusion that here we have a custom which apparently was generally followed by the Roman governors, in order to keep his subjects in a good humour, although the release just at the time of this particular festival, is of course a specially Palestinian nuance of the custom."<sup>(1.)</sup>

But this expedient proved as fruitless as the others. At the sight of the innocent victim, and at the words of the procurator, all the hatred seething in the hearts of the priests boiled over, and their fury knew no bounds, as they cried louder and louder, "Crucify Him! Crucify Him! "

(1) Rechts geschichtliches zum Neuen Testament pp. 7 & 8 by Dr. Otto Eger.

Once more did Pilate fall back on irony. "Take Him yourselves and crucify Him, for I find no crime in Him." This time the Jews were eager to take the governor at his word, for instead of replying as at first that the right to condemn anyone to death did not belong to them, they now made answer thus:

"We have a law, and by that law He ought to die, because He made Himself the Son of God." This was tantamount to saying,

"If we are unable to judge Him legally, we will put Him to death as our law demands." This alone can be the significance of their reply. They certainly could not have demanded that a governor should apply the Mosaic law in this case, because a foreigner who in a Roman province rendered himself guilty of a capital offence, was bound to be tried according to the laws of Rome. (L.3 Dig.De officio <sup>b</sup>praesidis<sup>s</sup>. 1.18.3.)

It appears that on receiving this reply, Pilate became more alarmed, not to say terrified. Once again did he go into the Praetorium with Jesus and said: "Whence art thou?" Receiving no answer he insisted. "Speakest thou not unto me? Knowest thou not that I have power to release Thee, and have power to crucify Thee?" Jesus answered and said, "Thou couldst have no power at all against Me, except it were given thee from above; therefore he that delivered Me unto thee hath the greater sin." (John XIX. 10.11.)

The impatience of the priests had now reached its height, and they hissed at Pilate the pregnant words, "If thou let this man go, thou art not Caesar's friend; whosoever maketh himself a king, speaketh against Caesar." (John XIX. 12.)

So spake the people who hated Roman rule. Pilate no longer resisted. For the last time he brought the prisoner forth, and gave Him into the hands of His accusers. For condemnation he delivered Him up. His sentence was a brief sarcastic question, "Shall I crucify your King?"

This was the last word of the judge who administered justice in the name of Rome, the mother of law, and the teacher of law to mankind. Not a single word more; not even the faintest

indication of the motive at the back of his answer, which was none other than a capitulation. We have, finally, but to rest on the simple statement of the Evangelist, that he released unto them Barabbas, and delivered Jesus to be crucified.

And Pilate wrote a title and put it on the cross. And the writing was JESUS OF NAZARETH, THE KING OF THE JEWS. And it was written in Hebrew - the language of the world's religion, in Greek - the language of the world's literature, and in Latin - the language of the world's law. "These three languages gathered up the results of the religious, the social, the intellectual preparation for Christ, and in each, witness (1.) was given to His office."

(1) Westcott, Gospel of St. John, Introduction.

And so the title which the Roman governor placed there, and declined to remove, was an unconscious assertion and prophecy not only of the Divine royalty of the victim, but also of the world-wide meaning of His life and death, taking place as it did, in that focus of the world of Jew, and Roman, and Greek.

The chief priests complained to Pilate concerning the inscription and said, "Write not 'The King of the Jews', but that He said, 'I am King of the Jews'."

Pilate answered, "What I have written, I have written", and in that curt reply rings the spirit of Imperial Rome.

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There has grown round the trial of Jesus Christ a great mass of literature. The information regarding provincial law and procedure which has been derived from the discoveries of the papyri in Egypt and published by ~~Matteis~~<sup>M.</sup> and Wilcken in 1912, has made ineffective and useless much of the contents of these works, at any rate, so far as Roman legal procedure in the provinces is concerned. The opinions of the different writers may roughly be classified under three divisions:-

- (1) That the trial was unjust and illegal:
- (2) That it was unjust, but legal:
- (3) That it was both just and legal.

1. That the trial was unjust and illegal: This is the prevailing opinion, and it is, I think, the verdict of Rosadi, Innes, Lord Shaw of Dunfermline, among others. There is little doubt but that Pilate thought that Jesus was innocent; if so, it was unjust to condemn Him to death. As to the illegality of the trial, there are those who declare it to have been so, because Pilate's mode of procedure was not the same as the procedure in criminal cases at Rome. This position, however, is untenable after the revelations of the papyri. It is surprising to find even the brilliant Tuscan advocate, Rosadi, applying ancient Roman law as exemplified in modern Italian procedure to a provincial trial that took place nineteen hundred years ago. We are of opinion that Pilate did carry out the formalities required in a Roman provincial trial, namely, the (1) Accusatio, (2) Interrogatio, (3) Excusatio, (4) Absolvo.

2. That the trial was unjust, but legal. Some of the most ardent Catholics have held that the capital sentence pronounced against Jesus was unjust but not illegal. Some have maintained that the trial was legal within certain limits and up to a certain point; that Pilate had observed certain important formalities required in a Roman trial as previously stated, and that in all these respects he was a correct judge, but that the subsequent proceedings were none other than a series of vacillations, compromises, and evasions, so designed as to avoid putting into effect the just verdict.

One is inclined to object to this opinion, because it splits the trial into two parts. It is one trial, and should be viewed as a whole, and its unity should not be marred or lost sight of, and its character should be estimated accordingly.

3. That the trial was both just and legal. This appears to be the view of Professor Husband. The charge against Jesus was a violation of the Lex Julia. Justinian in his Digest specifies

what are treasonable acts, but we need only enumerate those applicable to the trial in question. "The accusation of treason is made on the ground that the act done is inimical to the welfare of the Roman people, or is contrary to their safety. The 'Lex Julia' declares that he shall be held guilty by whose acts friends of the Roman people shall become enemies, or who shall maliciously bring it to pass that the king of a foreign nation shall be less obedient to the Romans ..... The private citizen shall be held guilty who wilfully and maliciously assumes the function of an official."  
(Digest 48. 4; 1,2,3,4,..)

The question we have ultimately to decide is, whether Pilate considered that Jesus had violated any of these provisions. Husband declares that Pilate was convinced that "Jesus had no intention of fermenting rebell<sup>o</sup>n against the Empire," repeating the epigrammatic sentence of the same writer, "technically Jesus was guilty, but actually He was innocent of intentional guilt?" The Professor further states "that this view makes clear the reason for Pilate's later attempts to release Jesus, and at the same time, frees him from the charge so often made against him, that he illegally crucified an innocent man. It seems to show that Jesus was innocent of a deliberate criminal offence against the Empire, and that Pilate recognised this fact, but that the claims of Jesus and the results of those claims did fall within the provisions of the Julian law of treason. The judge was forced, therefore, to accept this actual condition when the prosecutors would not yield their right of pressing the charge."

(Husband: "Prosecution of Jesus", page 259.)

We have already disagreed with the learned Professor when he says that Jesus was technically guilty, for Husband admits himself that Jesus had no intention of fermenting rebellion against the Empire, and that was the charge brought against our Lord. That being so, the governor had no alternative but to declare Him innocent, and this he actually did thrice.

Pilate knew the technicalities of the case, and the provisions of the Lex Julia, and in the light of this knowledge said, "I find no crime in Him." It was his deliberate and conscientious judgment, therefore the only just and legal course was to release Him. He had no right as a Roman judge to parley with the crowd, or to care whether his judgment commended itself to them, or to heed for a moment the consequences of his just and legal verdict.

In spite of the fact that he washed his hands, and tried to evade his judicial responsibilities by throwing the onus on the people (Matt. XXVII. 24). nevertheless the dread responsibility of crucifying an innocent man must rest on the soul of Pontius Pilate, who had not the courage to abide by his deliberate verdict, but yielded to the clamours of an angry mob.

It has been contended that the first duty of Pilate was to keep order and peace, and that his task was a difficult one. We will readily acknowledge the difficulty of ruling so turbulent a province<sup>e</sup> as Judaea, but we think it was the first duty of the governor to administer justice. In this he signally failed, and though Caiaphas committed the greater sin in delivering Jesus into his hands, nevertheless his own sin was great, inasmuch as he perpetrated an act which was against his conscience and his own better judgment.

#### CONCLUSION:

- (1) That there was but one trial, namely, the Roman, as the Sanhedrin did not possess criminal jurisdiction after the advent of the procurators to Judaea.
- (2) That in the judgment of Pilate, Jesus was neither technically nor actually guilty of treason.
- (3) That the governor delivered Christ to be crucified for fear of the Jews lodging a complaint against him

of disloyalty to Caesar, and thus adding one more count to a previous bad record - for irritating the Jews - a policy which was not Rome's, so long as a subject people was not endangering Roman sovereignty. As matters stood, we may say that Pilate would have felt it more than his place was worth to resist the demand of the priests for the condemnation of Jesus.

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THE TRIALS OF ST. PAUL.

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We would preface our chapter on the trials of St. Paul by two preliminary statements as to what was the manifest purpose of St. Luke, in publishing the Acts, the one statement by Dr. Ironside Still in his book "St. Paul on Trial", and the other by Dr. Maurice Jones, in his book, "St. Paul, the Orator."

I Dr. Still maintains that he has discovered a fact hitherto overlooked by New Testament scholarship regarding the character of the history in Acts. He contends that the book of the Acts is not primarily a history of the earliest Christian Church, but a statement of particular facts of that history written in preparation for the defence of the Apostle Paul in his trial before a Roman Court. Dr. Still adds further: "The present writer thinks that whatever opinions may be held as far as the first two-thirds of the book are concerned, there can be no doubt about the last third - the final section. This long section explains why Paul was arrested, and what happened to him at the Court of the Roman Governor of Judaea, before his appeal to Caesar, and after, till his case was settled in Rome. Fancy may explain this in many ways, but faithfulness to literary truth demands that we acknowledge this section as written to make the Jewish conspiracy against Paul's life clear to the Roman mind as the sole cause of his arrest, although the charges against him, and the gospel he preached, were framed by the Jews afterwards, when they had to divert Roman censure from themselves. We say this here, before the reader enters upon the argument, in order to keep in his mind, while he reads the first sections, and is inclined to think that they were written for the sole purpose of explaining Gentile Christianity to the world, that this last section will cause him to alter his opinion by showing the author's purpose to have been a much narrower one than that, viz., to defend Paul. Of course, the defence of Paul involved the defence of Christianity." (1)

1. DR. STILL: "ST. PAUL ON TRIAL." / " R.N.

In his references to Theophilus, the preceding writer believes that he had received verbal explanations and instructions concerning the plan to be adopted in Paul's defence, if not verbal instructions for his direct and formal defence in the Roman law court.

"In Paul's day the Roman advocate was considered essential in the supreme law-court, and though the Apostle Paul hoped to speak for himself, as the Holy Spirit should give him utterance, he knew how important a thing it was to have a Roman lawyer to argue such questions of Roman law as his trial would raise. One hesitates between thinking that Theophilus was chosen as the go-between in an effort to put the facts of the case before members of the Court and Caesar himself before the trial came on, or, on the other hand, as the go-between in instructing thoroughly reliable legal experts concerned to defend the Apostle, if indeed, he was not to be the advocate himself; for the Roman advocate was often of the highest rank. At any rate, we have found sufficient reason to conclude that one main intention in the preparing of Acts was that Paul's case should not suffer through lack of information as to the real situation of affairs, and as to special points likely to be the subject of inquiry.<sup>1</sup>

II. According to Dr. Maurice Jones "the central idea in the last portion of the Acts is discovered to be in the way in which the relationship of the Christian system to the Roman authorities is pictured, and in the unique importance attached to the alleged absence of any hostility on the part of the Imperial officials to Christianity as such.

The whole trend of the narrative is to define the friendly relations which existed between the Christian religion, in the person of its greatest and most renowned exponent, and the Empire, as represented by the imperial officials of the province.

<sup>1</sup>. Dr. Ironside Still: "St. Paul on Trial" p.87.88.

Thus where the Apostle and his companions have been subjected to persecution and violence, it is generally at the hands of the mob, stirred up by the fierce jealousy of the Jews, as at Antioch in Pisidia (Acts 13.<sup>50</sup>) Iconium (Acts 14.<sup>5</sup>) Lystra (Acts xiv.<sup>19</sup>). In Greek cities, again, it is the Jews and the rabble who are the cause of hostility as at Thessalonica (Acts xvii.<sup>5</sup>) and Berea (Acts 17.<sup>13</sup>) and where official action is instituted against them, it originated with magistrates who were local and municipal officials, and not those of the Empire. As against this, in the list of punishments which the Apostle gives in 2 Cor. xi. 23-25, there are some which could not have been administered except by the Roman authorities, and these, the historian, in pursuance of the definite purpose of the book, has kept out of sight. The imperial officials, throughout the book, appear to be not only friendly, but are often the Apostle's one source of defence against the Jews, and this is represented as being true of officials of the highest standing such as pro-consuls and procurators. Gallio at Corinth contemptuously disregards the accusations of the Jews against the Apostles, Acts, xviii.<sup>14</sup>, while Festus acts justly and constitutionally towards him, and refuses to hand him over to the tender mercies of the Council at Jerusalem. Even Felix took no active part against him, and is sympathetic towards his teaching, though his better feelings are ultimately overpowered by greed. With the officials of lower grade, such as the chief captain and the centurions, the Apostle is ~~being~~ described as being on terms of the most friendly intercourse.

Now the great care displayed throughout the book in emphasising this attitude of Imperial officialdom towards Christianity in the person of the great Apostle, must minister to a definite purpose on the part of the writer, and of the nature of this purpose there can be but one opinion. The Acts of the Apostles was intended by the writer not only as a manual of instruction

for Christians in the progress and developments of the Church,  
 but it had another and more immediate object. It was definitely conceived as an apologia to the Roman authorities, based on a full recital of the policy pursued by the provincial officials of the Empire towards St. Paul. We are thus able to understand the anxiety displayed by the historian to demonstrate how absolute was the acquittal of the Apostle in those stages of the trial which preceded his appearance before the imperial tribunal itself at Rome, how out of three Roman officials two, viz., Claudius Lysias (Acts 23.<sup>29</sup>) and Festus (Acts 25.<sup>29</sup>) had declared his innocence, while a third had shown him considerable favour. The climax of the whole book is reached in the very last word ἀκαλύτως "none forbidding him" a comprehensive phrase implying the whole character of the Roman policy at this period towards Christianity, as displayed by the Imperial officials towards St. Paul."

So much for the purpose of St. Luke in publishing the Acts.

1. Maurice Jones. "St. Paul the Orator" pp 168-9.

THE CONFLICT OF THE ROMAN  
WITH THE CHRISTIAN EMPIRE.

THE TRIALS OF ST. PAUL.

THE CONFLICT OF THE ROMAN  
WITH THE CHRISTIAN EMPIRE.

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The Trials of St. Paul.  
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The dominion of Rome was a protection and help to the progress of the Gospel in its earliest days. The widespread peace and the established authority that prevailed were significant, among other preparatory elements of the age, of the fact that "the fullness of the time was come." More than this, the idea was made possible to men's conceptions of a universal allegiance to a throne and a power, which enabled them to grasp the central thought of Christianity, in their worship of "another King, one Jesus." The civilised world of that date was under one dominant system of law; ease and safety of travel and communication between distant places was assured; the way was opened up for the spread of that dominion which would claim obedience from all nations. The crooked places were made straight, and the rough places plain.

St. Paul was a great ambassador to the Gentile world of this new and sovereign power, and was specially fitted for his peculiar work. He was a "Civis Romanus" by birth, though a Jew by education and religion. He was thus fitted to be the messenger of the Faith to men of both nations. Brought up under the "Potestas" of his Father, his character would be specially fitted and formed for his work among those of the Roman nationality or those who dwell under its wide rule. The habits of discipline and strength of character thus attained, would stand him in good stead when his turn came for severe and trying endurance and action, for organising, ruling, and guiding the infant community he was to do so much to form. His citizenship would be the means of assisting him to carry the Gospel he taught well nigh all over the known world, from the "humblest" colonies to the household of Caesar

himself. At the same time his Greek tongue and education would wing his utterances to the ears of the most cultivated and philosophical men of his day.

The book of the Acts of the Apostles is full of instances of the advantage of St. Paul's Roman citizenship to him in his missionary work. In some cases it made persecution - always ready to follow him - difficult; in others it refused to be made its instrument. The law which tolerated his own countrymen could not be bent to help their clamours when they wished to turn it against him. If the question was only one "of their law" or profession of faith, the Roman would be no judge of such matters.

The Apostle commenced his great work from Antioch in Syria as a starting point. As falling in with our present line of thought, it was well chosen for the purpose, as it was the seat of a peaceful Roman administration. It was here that the followers of the Galilean first received the name of Christiani, and the name was borne by them apparently unmo-  
lested.

By the over-ruling hand of Providence, through the power of a greater dominion than that of Imperial Rome, the great world-power of the age was made subservient to the establishment of the Kingdom of the Christ, which in time should even take its place and utilize the organisation of the ruling power which, after acting first as a cradle and protection to the Church, should presently meet it face to face as a rival; and by and by bow down before it, and give it place. In doing this, it should impart to it something of its principles, system, and language, and so further the dominion of an international and spiritual state, of an eternal monarchy, which should demand and obtain the allegiance of all races of men. The important part which the Roman Empire was destined to play, thus, in the spread of the Christian faith, is shown to some extent by the facts and details above given. We shall also, by the glance now taken,

have become familiarised with the atmosphere of Roman Law in which the Apostle Paul moved and taught. Without this aid and influence, it is probable that the Latin races and Western peoples would have in a great measure failed to receive and assimilate the profound truths and conceptions of the Gospel. In the Great Epistle to the Romans themselves they found the message adapted to them, and conveyed to them "in their own tongue wherein they were born". And in St. Paul's letters to the Corinthians and the Galatians many familiar images would occur to the minds of his readers in his earnest arguments concerning Christian privilege and duty, powerfully enforced by appeals to the law so well understood in their general principles, and so apt in their details. The Gospels contain, of course, the statement of facts affecting our religion rather than the reasoning of Doctrines; and this is sometimes urged in disparagement of theology as such; the important fact being overlooked that before faith could be taught its foundations must be laid. But the Epistles of St. Paul are indeed theological treatises. Abstract argument has a large place in them; Divine metaphysics are formulated into a system.

Christianity travelled from the East to the West; and though for the first two centuries it was still under the influence of Greek thought and the Greek tongue, the characteristics of the Roman spirit forbade that it should for a lengthened period be ruled by the influence of Greece. The philosophy which was effected in the Theology of the East, was represented in the West by the legal genius of the Roman Empire; and it is not to be denied that a powerful stamp has been given to modern Christianity by the mould of Roman Law in which so many of its conceptions were cast. Christology in the distinctive theology of the Greek-speaking Church; Soteriology that of the Latin. The intellectual and speculative Eastern mind seized upon subtle metaphysical points, while the Western genius turned to practical questions of law and system, and of the making of a man "just with God." Ready to the hand of the latter was the



possession of a language and a habit of ~~the~~ thought which enabled it to meet the questions of free-will and grace, of moral obligation, of transmitted sin or liability, of satisfaction and atonement, which, never in the same way, troubled the Eastern Mind.

In tracing the influence of the Roman Law on the writings of the New Testament, we shall plainly see how all this holds good even with regard to the first approach of the Truth to the Western mind.

One portion of the Acts of the Apostles is concerned almost entirely with the History of Paul, and only incidentally with the history of other personages, as Lysias, Felix, Festus, Agrippa and others. In this section of the "Acts", the Apostle continually occupied the stage; and round him the interest revolves, and other personages play the minor parts. His trial by the Roman authorities is evidently regarded by St. Luke as of prime importance. The Evangelist Luke, in his Gospel gave great prominence to the Trial of our Lord before Pontius Pilate, and it is clear that he was better versed than the other Gospel writers in the technicalities of Roman ~~Law~~ law. It would seem that the author of the Acts of the Apostles was well versed not only in Medical Terms but also in Legal phraseology, and it is not unlikely that, like the ~~Great~~ African Father, Tertullian, he combined the profession of Medicine with that of Law.

The correctness of these legal accounts is well proved by the recent discovery and the study of the Papyri, through which we now have a more complete knowledge of that branch of law which prevailed in the Eastern provinces of the Roman Empire in the first century of our era, in which Christianity grew up.

We must not conclude that there prevailed in the East one law binding on the whole Empire. Indeed, we have examples of Hellenistic, Egyptian, Jewish, and Galatian Law, valid by the side of the Roman, still there was one ultimate court of appeal, namely, ~~The~~ Provincial Governor. The Papyri supplied valuable

material especially in corroborating the accounts of the procedure against St. Paul, as recorded in the Acts. They afford confirmation that the statements as to the interference of the Roman Officials was according to the mode of procedure in Roman Law; such as the arrest of Paul by the Chiliarch, the sending of the prisoner to Felix the Governor, the proceedings before Felix and his adjournment of the case, and finally, the fresh proceedings before his successor Festus, and the transferring of the case to the Emperor in consequence of St. Paul's appeal. Further, there is clear evidence of the employment of legal terms in use in the Greek Official Language of the Roman East. For example, the Papyri show us that the letter of the Chiliarch, Lysias, whereby he sends the arrested Paul after his preliminary examination to the Governor, was composed in a style which was used in official written documents in similar cases. Also, in the narrative of the bringing of Paul to the Governor by the soldier who escorted him, and of his first examination by the Governor Felix, technical expressions drawn from official language are to be found. The description of the legal proceedings before Felix begins with the mention of the summons to appear, a term which is typical of the Protocols on legal proceedings; on the other hand, the Papyri shows that it was quite a regular termination of the proceedings when Felix, after the adjournment at the conclusion of the period, gives an order for the continuance of the imprisonment of Paul.

A comparison of the pleading of the rhetorician Tertullus with the speeches of Rhetoricians, actually delivered and preserved on Papyrus, and the memorials addressed to officials and written by persons skilled in affairs - offers many points of contact with the proceedings recorded in the Acts of the Apostles. Finally, numerous expressions found in the account of the renewed hearing of the Process before the Governor Festus recur in the Papyri documents, and this fact, and in particular the mention of the consultation of Festus with his Council, show the Author's familiarity with the course of judicial proceedings

and the drawing up of legal documents.

The close connection of this description with official terminology raises the question whether the official records of the Pauline trial might have furnished the foundation for the account given in the Act of the Apostles, or at any rate, for some parts of it. There is no force in the objection that it would have been difficult for the Author to get a look at the records; for the Papyri show us that in the Roman period the official day books in which, among other things, protocols of legal proceedings are to be found, were publicly posted up, kept in the Archives, and also made accessible to the public for taking copies. But at the same time, no certain affirmative conclusion can be drawn. Also, even without knowledge of the records, an educated man who knows the ways of the world, such as the Author was, could give an account even though he was by profession a Physician, and had enjoyed no special Juridical training, but here it is worthy of note that the Muratorian Fragment designates Luke as "Juris studiosus."

To continue the study of the interesting Papyri would take up more space than can be allotted in this thesis. We again turn to the legal sections of the Acts of the Apostles, in order to see the wide knowledge of the Author of Legal Procedure in the Empire.

For instance, when Paul and Silas were charged before the Politarchs, we find that Jason became security for the two prisoners. And the Politarchs discounting the elements of which the crowd was composed, dealt leniently with the case, and merely took steps to prevent the recurrence of a breach of the peace. For this purpose they took security from Jason and his friends, or in legal technical terms, "Satisfatione accepta." In the Vulgate this phrase is rendered "Satisfactione accepta."

The Satisfatio was the giving of security for a certain object - in this case the prevention of a recurrence of a breach of the peace. Jason and his friends became sureties (vindices or fidejussores) and entered into recognizances (vadimonia) in

answer to the question, "Do you become surety for this purpose?"  
(Gaius iii 116.)

They were doubtless bound over to pay a certain sum of money in the event of further disturbance, or perhaps to deposit a sum of money to be forfeited if further troubles arose.

In continuation of our consideration of these legal points, we turn to the study of the following passages, Acts viii. 9. "But there was a certain man, called Simon, which beforetime in the same city used sorcery, and bewitched the people of Samaria", Acts xiii. 6. "And when they had gone through the Isle into Paphos, they found a certain sorcerer."

Again, Paul the Jurist says that persons introducing new kinds of worship, unknown to custom or reason, and disturbing weaker minds, were to be punished, if persons of rank, with deportation; if not of rank, with death. (Sent. 5.21.2) We must remember the legal ordinance not only in reference to the trial of Jesus Christ, but also in reference to the allusions we find in the Acts of those who set forth strange doctrine, etc. Accordingly we find the members of the council charged Peter and John, "not to speak at all nor teach in the name of Jesus". (Acts iv. 18). Again, we find members of the council in the rebuke they addressed to the Apostles, saying - "We straitly charge you not to teach in this name," etc. (Acts v. 28.) We find a very clear declaration in reference to this obligation enjoyed by Roman Law and Custom in Acts xvi 20, 21. When the masters of the damsel, who had a spirit of divination saw that their hope of gain was gone, they brought Paul and Silas before the magistrates and laid this charge against them:- "These men, being Jews, do exceedingly trouble our city, and set forth Customs which it is not lawful for us to receive or to observe, being Romans." etc. (Acts xvi. 20. 21.)

When St. Paul, by the Divine power, had exercised the evil spirit from the damsel, her masters perceived she would be of no further service to them. Paul and Silas were

forthwith dragged before the magistrates and charged with an offence recognised by the Aquilian Law, because injury had been done to a slave. The Aquilian Law was the excuse for the prosecution, and for the misguided intervention of the Praetors. Having prejudged the case, without giving a hearing to any kind of defence which might be made, they inequitably condemned these men to prison after first inflicting on them the indignity of being scourged in public. On the following day, the magistrates sent the lictors to see that the prisoners were set at liberty. Then the Apostle asserted his privileges as a Roman citizen. Their privileges had been shamefully violated; they were "indemnati" uncon-  
demned, and yet they had been scourged and imprisoned. As Romani they claimed at the ~~head~~ hand of the officials not only recognition of their privileges, but also protection from lawlessness, as their right., The Praetors had stultified themselves and had rendered themselves liable to no light penalty for their action in the matter, which constituted a violation of the Porcian Law. Then the Duumvirs presented themselves to the prisoners; they evidenced a chastened and humble spirit, for they brought them out and desired them to depart out of the city.

At Thessalonica a charge of treason, under the laws "De Majestate" was brought against the Christians. The charge alleged they had asserted there was "another King" Jesus Christ. "Speaking against Caesar", was the treasonable offence they were alleged to have committed.

Majestas was an offence against the State, which was, in the earliest time of the Republic, known as Perduellio, i.e. very war, duello being the old form for Bellum. It was a crime punished with the utmost severity, either interdiction by fire and water ( aqua et igni interdictio) or death. Perduellis was the guilty person, a traitor, a public enemy of the state.

Originally the crime was not precisely defined; but it *was* comprised of such offences against the State as <sup>s</sup>constituted the offender an enemy, such as aiming at regal authority, conspiring against the government, misconduct on the field of battle, or giving aid to the enemies of Rome. Of such an one Cicero writes that he who "Proprio nomine perduellis <sup>s</sup>egset, is hostis vocaretur."

By degrees the term Perduellio fell into disuse, and was replaced by Majestas. The term perduellio did not indeed disappear, but the crime it indicated was merged into Majestas under the Empire. Ulpian described it as a species of Majestas and distinguishes between ~~majestas~~ which is perduellio, and majestas which is not.

Majestas was the master crime; none greater could be committed. It answered to High Treason in the English Law. The full term was Crimen ~~laesae~~ Majestatis, or as expressed in English Law "Lese" ( or Leze) "Majesty".

It was called majestas on account of the magnitude ~~of~~ <sup>the</sup> ~~crime~~ of the crime, and it implied any offence by which the sovereign power of the Roman State was injured, diminished or impaired. Hence the cognate phrases, ~~laesae~~, minutae, imminutae, or deminutae majestatis. It is defined by Ulpian as "Crimen adversus populum Romanum vel adversus securitatem ejus". It is a more inclusive <sup>term</sup> than perduellio and embraces any offence by which the Majestas of the Roman people is impaired.

At Athens, some of the Epicureans and Stoic philosophers encountered Paul and said - "What would this babblers say, other ~~some~~, He seemeth to be a setter forth of strange gods," etc. The Crime alleged against Paul, when he was charged before Gallio, the Pro-Consul of Achaia, was of a somewhat vague character. "This man persuadeth men to worship God contrary to the Law." The Jews who brought the charge meant by the expression, "Contrary to the Law," "Contrary to the law of Moses". Gallio perceiving that it was not a charge which alleged any contravention of the Roman Law, asserted - "If indeed it were a matter

of wrong or of wicked villainy, O ye Jews, reason would that I should bear with you; but if they are questions about words and names and of your own law, look to it yourselves, I am not minded to be a judge of these matters. (Acts XVIII. 12 ff.)

When the Jews at Corinth made insurrection against the Apostle, they accused him before Gallio, the brother of Seneca, of "persuading men to worship God contrary to their Law." Judaism being a "Religio licita" Roman Law allowed the Jews to worship God according to the requirements of the Law of Moses, and strange to say, the Jews desired to have the Christians condemned and punished because the growth of their religion meant the supersession of Judaism. Thus the profession of Christianity was treated as an offence against the public peace. But contrary to the expectations of these accusers, Gallio, following the general policy of the Roman Governors not to interfere in mere disputes about religion, refused the charge as constituting a legal offence.

On this subject Professor Ramsay writes:-

"The recalcitrant Jews brought a charge against Paul before the Roman Governor of the province, Junius Gallio: a brother of the famous philosopher and statesman Seneca - They accused him of persuading men to worship God contrary to the Law. - - - He declared that in<sup>a</sup> charge of misdemeanour or crime he was ready to hear evidence, but in a matter of religion and ritual the Roman State would not interfere - - - The decision of the Governor was most important; it amounted to a declaration of Freedom in religious teaching; the Christians might preach and the Roman State would not interfere with them, unless they were charged with some breach of the Civil or Criminal Law. Thus Rome became for the time the protector of the New Teaching, against Jewish opposition." (Ramsay, "Pictures of the Apostolic Church", p. 206 f.)

Roman Law proved an effective protection to the Apostle at Ephesus - the capital of the Roman proconsular province of Asia. It was an assize town, and fortunately for the Apostle,

the court was open, and the proconsuls were in session, ready to administer justice to all who claimed the enforcement of their rights. The words of the Town Clerk were judicious and effective to quell the spirit of ~~the~~ riot which possessed the people. The probability of forfeiting their rights served to restrain them.

The Town Clerk in quieting the turbulent population of Ephesus retorts on the accusers of the Apostles that ~~they~~ they are no law breakers, but that they who brought this charge were themselves transgressors of the Law - "For ye have brought hither these men which are neither robbers of the temples nor blasphemers of our Goddess - - - For indeed we are in danger to be accused concerning this day's riot, there being no cause for it; and as touching it we shall not be able to give account of this concourse." (Acts XIX. 37. ff. ) We find in this ~~passage~~ passage a recognition of the supremacy of the rule and of the operation of the Roman Law, for the Town Clerk asserts:-  
"If therefore Demetrius, and the craftsmen that are with him, have a matter against any man, the courts are open, and there are proconsuls; let them accuse one another."  
(Acts. XIX. 38.)

"Romans and Greeks were alike familiar with the distinction between a properly and legally convened Assembly of the people - and a mere assemblage of the people to hear a statement by the magistrate or give vent to some great popular feeling in a crisis. An assemblage of the latter class was liable to pass into disorder, and was certainly disliked and discouraged by the Imperial Administration - - - The assemblage, which was known as a contio could exercise no authority, and pass no resolution, but merely listen to the statement of the magistrate who convened it and of anyone whom the magistrate invited to speak ( Produxit in contionem). - - -

The translation "Town Clerk" or "Clerk" suggests an inadequate idea of the rank and importance of this official. A better designation is "The Secretary to the State of Ephesus". The Official pointed out the serious risks that this utterly



unjustified Government ( i.e. the Proconsul in the first instance) was a cause of riot, and should lead to stern treatment." (Roman<sup>ansay</sup>, "Pauline and other studies". p.205.f). The term "Lawful Ass<sup>4</sup>mbly" embraces all meetings of the Assembly qualified to set in motion the powers resident in the people." (ib p 20' ). M. Levy says, "The Roman Administration had the power to prohibit indefinitely the right of holding meetings of the people; and it depends solely on their goodwill when they would allow a city to resume the right after it had once been prohibited. The occurrence of this large meeting in the theatre might be looked into by the Roman Officials." (ib. p. 212.f.)

We now proceed to a somewhat detailed account of the legal procedure in the Final Trials of St. Paul. The Criminal Law of the Roman Empire is not easily accessible to the student. The Institutes of Gaius and of Justinian are occupied almost exclusively with the Civil Law. The Chapter in Justinian, De Publicis Judiciis gives very little information, and from Gaius we can learn nothing whatever on the subject.

Lord Mackenzie (Studies in Roman Law, 7th Edn. p. 408) writes; "The Criminal system of the Romans never attained to the same degree of maturity and perfection as their law of civil rights. Under the Empire the violence and jealousy of every bad prince, and the shortsighted policy of every weak one, led to numerous inconsistent ordinances, often dictated by mere caprice, which threw this branch of Roman Jurisprudence into great confusion."

Under these circumstances the knowledge of Roman Criminal Law must, to a great extent, be gathered from allusions in the writings of the historians, and especially from Cicero's orations; in particular that against Verres.

The Trial of St. Paul is related at greater length than that of our Lord, and it has more of the forms of Judicial Procedure. The two cases were vastly different. Our Lord was a provincial, unprotected by the privileges of Citizenship. Pilate could deal with Him much as he pleased, and no one would

complain, provided that he did not give too great cause of offence to the priestly parties of Jerusalem. But St. Paul was a Roman citizen, and Felix would not feel himself at liberty to disregard the procedure customary in the provinces in regard to publica judicia. Hence we can trace the various stages in St. Paul's Trial, from Arrest to the Appeal, with much more clearness than in our Lord's case. We see plainly that the trial of St. Paul was conducted in due form, and is recorded with greater care, and more attention to details. We recognise at the same time several technical legal terms and phrases, the parallels to which are to be found in the Orations of Cicero.

The proceedings against St. Paul have been up to this point Jewish. There had been a hearing before the high-priest Ananias, and the Sanhedrin. If those present on this occasion had been able to control themselves, this hearing might have become a legal trial, under Jewish rules, before the Sanhedrin. But that meeting ended in a riot, Lysias was compelled to resume possession of the Accused. The subsequent conspiracy put the Jewish Party entirely out of court, and the Roman authorities were now in charge of the case.

The Trial is conducted under Roman Rules of Procedure. Felix has become the Quaesitor; and the Quaestio, or Inquiry affecting the Caput of the Roman Citizen, is in his hands.

Ananias, hitherto the judge, has become the Prosecutor, Great latitude, in this respect, was allowed by Roman Law. Anyone might take up the position of Prosecutor. At Rome the Prosecutor was required to obtain the sanction of the Praetor. His application for this purpose was called Postulatio, and must be published in the form. His definition of the charge was made in writing, and was designated inscriptio. If several persons applied at the same time, a Jury decided which of them should be the impeacher. This process was called divinatio.

The preliminary proceedings were not necessary in St. Paul's case, as their place was taken by the Elogium. This Elogium was delivered to the Procurator Felix, who at once entered upon a brief examination, interrogatio, inquiring to which province he belonged, Felix was now in possession of the case, and had noted the name of the accused. ("Nominis receptio"). He commits the prisoner for trial, and appoints a day. "I will hear thy cause", said he, "when thine accusers also are come." (Acts XXiii. 35.) The usual day of trial at Rome was ten days after the registering of the name, except in such cases where the day was fixed by the special law regulating the quaestio. Also a prisoner sent with an elogium should be tried, if possible, within three days. The prosecutors, Delatores, were in Jerusalem, and a longer period must elapse. It would take two days for the messenger to reach Jerusalem, and two days for the prosecutors to travel to Caesarea. There had been consequently no time lost when the Trial began five days later.

Meanwhile St. Paul was detained in Herod's Palace, one of the magnificent edifices, with which Herod "the Great" had adorned Caesarea.

The Praetorium or Palace of Herod seems at the time of Paul's detention to have been devoted to public offices, as a kind of Government House; and the Procurators were housed in another building. But nothing certain is known on this point. Some authors identify the two buildings. Whether the Procurator resided in Herod's palace or not, there is no doubt whatever that St. Paul was detained, under the charge of the military, in one of the guard rooms of Herod's Praetorium.

The superior magistrates at Rome sat in the Forum or Comitium, on their curule chairs inlaid with ivory, assisted by the lower magistrates seated on subsellia, or lower seats. The legal proceedings at Rome were imitated by the provincial magistrates, as far as the circumstances would admit. Hence we may think of Felix proudly seated on his sella curulis

in the praetorium at Caesarea, surrounded by the clerks and lictors, and other officials, and with the prosecutors and defendant and advocates before him. The prosecutors were the high priest Ananias, and certain elders. They had provided themselves with an orator named Tertullus to plead before the court, on their behalf. Until the time of Diocletian there was no class of professional Counsel. A man might conduct his own case, whether as prosecutor or defendant; or he might place himself in the hands of an advocatus or patronus. At St. Paul's trial Ananias had engaged the assistance of Tertullus; while on the other hand St. Paul elected to defend himself.

It was customary for those who were ambitious to practise in the law courts at Rome to attach themselves to some provincial governor, and to gain experience in his courts, to serve them when they embarked upon the severer contests at Rome, and entered into competition with men like Cicero. The services of such advocates were useful to the provincials who would be imperfectly acquainted with the forms of Roman jurisprudence.

The Latin language was usually employed in the pleadings before the provincial magistrates, even when the language spoken in the province was Greek. But Greek was not prohibited, and was not infrequently employed when all the parties to a suit spoke that language. In the Trial of St. Paul before Felix, the proceedings were doubtless conducted in Latin, according to custom. His prosecutors being Jews, would know but little Greek, and probably no Latin at all. Hence it became a case of necessity for them to obtain the aid of a Latin-speaking pleader, which they did in the person of Tertullus. (Acts. XXIV. 1.) The name Tertullus is Roman; it is the diminutive of Tertius, formed like such names as Lucullus or Catullus. He may have been one of these aspirants for forensic honours, who abounded in the provinces; and his speech was no doubt made in Latin.

Tertullus, on behalf of the prosecutors, opened the case with the process known as nominis or criminis delatio, described by St. Luke in the words, "Informed the governors against St. Paul". i.e. formally laid criminal information before the quaesitor Felix; with the name of the accused and the crime alleged against him.

The next step was to summon the Prisoner before the Bar as stated by St. Luke, "and when he was called." This was the citatio and was proclaimed by the Praeco, or crier.

St. Luke does not state whether the formal charge, or inscriptio was drawn up in writing and signed by the prosecutors (subscriptio) as was usual, but as everything seems to have been done in due form, this document had no doubt been already handed in.

Tertullus now opens the case against the prisoner. He was evidently an experienced pleader, an orator forensis or causidicus, already ripe for the Bar in the Forum at Rome. His exordium is very judiciously directed towards gaining the attention and the good will of the judge by a little wise flattery, lauding his energy against the brigands, whereby as he suggests, peace had been restored to the distracted province. He then introduces the word "providentiae", applicable to the emperors and inscribed frequently on their coins; and he continues, "by thy providence, evils are corrected." This was the usual captatio benevolentiae, calculated to please the judge, on the principle that "Inter praecepta rhetorica est, iudicem laudando, Sibi benevolum reddere" Felix, the enfranchised slave, raised to undeserved eminence, must have experienced a pleasing sensation, as he sat in his curule chair and listened to this talented orator reminding him of his successful career during the past six years. He further assured the governor that he would not tediously prolong his speech, and craved his clemency while he concisely recited the facts of the case before him.

He then proceeds with the indictment, the accusatio of

which he puts into three counts; or putting it in three words, he was guilty of Treason, Heresy, and Sacrilege.

(1) Treason: He was "a pestilent fellow and a mover of insurrections among all the Jews throughout the world". He was, literally, "a plague", *pestis pestiferus*, as the Vulgate renders it. He was a man who stirred up tumults, and organised seditious disturbances wherever he went, throughout the Empire.

(2) Heresy: He was a "ringleader of the sect of the Nazarenes." Tertullus employs the very word "heresy" though that word had not yet acquired its ecclesiastical sense of error in doctrine. In this sense, however, St. Peter uses it in 2. St. Peter, ii. 1. "But there were false prophets also among the people, even as there shall be false teachers among you, who privily shall bring in damnable heresies."

It is to be observed that the advocate of the Jews speaks of St. Paul's followers as "Nazarenes", followers of Jesus of Nazareth; he could not consistently use the title of "Christian", which had been conferred upon them at Antioch, as such a title involved Messianic hopes which they themselves cherished.

(3) Sacrilege: He had "essayed to profane the Temple". The first charge was an offence against the Roman Law, the Law of the Empire; the second, against the Jewish Law, the Law of Moses. The third was a violation of both. It was a breach of Roman Law, which protected the Jews in the exercise of their religion, having registered Judaism as a religion licita; a breach also of the Law of Moses, because he had (so they asserted) profaned the sacred precincts by introducing within their limits the Ephesian Trophimus.

At the conclusion of Tertullus's speech for the prosecution, "The Jews joined in the charge, affirming that these things were so." These were the prosecutors, the high priest Ananias and the elders. They were not witnesses. None were produced. On this we shall comment presently.

The proceedings in Court, after the formal Citation of the accused, began with the Allegation, an argumentative discussion between the parties concerned, the accusator and the reus (the prosecutor and the accused), or their advocates.

Tertullus having resumed his seat, Felix beckons to the prisoner to proceed with his defence, merely nods to him, as the word implies.

St. Paul does not employ a rei patronus or counsel for the defence, but conducts his own case. In the English law-courts, a man may plead his own cause, or defend himself, but he may not depute this office to anyone else except to a barrister in the superior courts, or to a barrister or solicitor in the inferior courts. But in Roman Law the parties to a suit could avail themselves of the assistance of anyone whom they chose to appoint. There was some correspondence between Roman and English Law. The Roman advocates theoretically practised gratis; and any recognition made to them was a present or gratuity. The amount of this honorarium was afterwards limited to 10,000 sesterces, or about £80. And so it is with ourselves; counsel cannot maintain an action for his fees, which are regarded as quiddam honorarium.

St. Paul now makes his defence. It is interesting to compare his exordium, with that of Tertullus. Tertullus is complimentary to the governor to the verge of falsehood, but St. Paul does not descend to flattery. He merely states that he is glad to plead before <sup>one who</sup> ~~any~~ ~~who~~, having held the office of Procurator for so many years would be well qualified by the experience thus gained, to deal with causes between Jew and Jew. Felix had been Governor for the six years, from A.D. 52 to A.D. 58.

St. Paul shows himself to be a skilful advocate. He was appealing to a principle admitted by Roman Law. Each nation was allowed full freedom to worship its own Gods, even though

foreign Cults might be prohibited. Paul therefore was within his rights in worshipping his own ancestral or hereditary God, the God of his Fathers.

St. Paul was justified in his demand for witnesses, (Acts, XXIV. 19.) The Roman Law usually required at least two witnesses to prove any fact; in some cases even five were necessary. But the Sanhedrists wished to press the charge without any witnesses at all.

In the trials at Rome the judge was assisted by a jury (Judices,) who gave their verdict by means of tablets, marked "A", "C", and "N.L." , i.e. Absolvo (not Guilty) Condemno (Guilty), and Non liquet. (Doubtful).

The voting was originally open, but after the Lex Cassia (B.C. 137) by ballot. A majority of votes decided.

In the provinces these judices were not always to be obtained, with the necessary qualifications; and in such cases, as in the case of St. Paul, the ~~governor~~<sup>governor</sup> pronounced his decision without assistance.

When the Jury voted "N.L." the Judge would pronounce the word "Amplius", i.e. "Further", or "More Fully", and the cause before him would be adjourned. This was called Ampliatio or Comperendinatio , the latter being an adjournment to the third day, the former an adjournment to any day fixed by the judex. Felix, then, when the hearing was concluded, remanded the prisoner; rem<sup>ya</sup>pliavit , or rather, eos<sup>g</sup>pliavit as St. Luke expresses it (Acts XXIV. 22.) assigning as his reason the absence of Lysias, whom he deemed to be a material witness: his real reason being the hope of a bribe, as stated in verse 26. "When Lysias the chief Captain, shall come down, I will determine your matter."

St. Paul is then committed to the care of the centurion, "in custodia militaris," but relaxed as far as possible, and with the permission of free access to his friends. It is a question with some as to whether this was not Custodia libera, which was the usual mode of detention pending the



decision of the judge.

Felix in remanding St. Paul, "Hoped that money would be given to him of Paul," Acts. (xxiv. 26:) yet the taking of a bribe was a serious offence in the eye of the law. The Lex Julia de Repetundis, enacted B.C. 59, forbade any magistrate or president of a criminal court to receive money or any article of value, to act in violation of his public duty. The prohibition is precise; the Digest specifies such offences as receiving a bribe for inflicting bonds, stripes, or imprisonment; or for freeing a prisoner, or passing sentence of condemnation or acquittal. Any magistrate so offending, was liable to punishment by deportation or exile. Deportatio was a severer form of banishment than relegatio. The latter involved banishment to an island at a certain distance from Rome or Italy, for a limited time, or for life, but without loss of citizenship. Deportatio carried with it capitis deminutio and confiscation of property, unless the contrary was stated in the sentence (Digest 48). But as a coach and four (so it is said) can be driven through any Act of Parliament, so these severe penalties of the Roman Code were frequently evaded or even openly disregarded, especially in the provinces.

Hence Felix seemed to dread no unpleasant results from keeping Paul unjustly in bondage, and letting fall hints that bribe would be welcome. And, as no response was made to these hints during the remaining two years of his procuratorship, he left his prisoner in bonds.

The Apostle was tried afterwards by Festus. Festus was a better man than the unpri<sup>nc</sup>ipled Felix, and, as we gather from St. Luke's narrative, really desired to do justice in the case of the prisoner whom Felix had left in bonds. He acts with great promptitude; and three days after arriving at Caesarea to take up the duties of his "Province" he went to Jerusalem.

The word "Province" is here used in the colloquial sense, just as the title "King" is applied to Antipas. Strictly

speaking Judaea was not a province, <sup>but</sup> a procuratorship attached to the neighbouring province of Syria, of which, for certain purposes, it formed a part.

Theoretically, when a Jury had voted Non Liquet, and the judge had pronounced the formula amplius, there must be a new trial. At the end of this second trial the jury were bound to come to a decision, they must either acquit, or condemn; they were not allowed to resort to the alternative verdict Non Liquet. We must consequently understand this trial before Festus, not merely as a resumption of the proceedings before Felix, but as a commencing de novo, so that the new governor might be put into full possession of all the <sup>hearings</sup> of the case. Felix had "deferred them" eos ampliavit and left the province. With the new Procurator, the trial begins afresh.

But St. Paul's patience now begins to fail him. He had been two years in prison, he had already defended himself four times, he had passed through three riots and two conspiracies, he had been bound with chains and tied with thongs for scourging; and now a proposal is made to him that he should be handed over to his bitterest enemies. Previous experience had taught him that he had no more hope from Roman Law than from Jewish ideas of justice, and he determined to lodge an appeal.

St. Paul lodged his appeal formally. The single word Appello was sufficient; and he doubtless pronounced the phrase in the Latin tongue, "Caesarem appello."

St. Paul gives reason for his appeal. "I am standing before Caesar's Judgment-seat, where I ought to be judged", and therefore I object to be sent to Jerusalem for my Trial, my case being now before the Roman Court. "To the Jews have I done no wrong". They have consequently no right of trial. "If I have committed anything worthy of death<sup>95</sup>, I refuse not to die; but if none of those things are true, whereof these accuse me, no man can give me up to them." Failing to

obtain justice in the provincial court at Caesarea, I appeal to the Emperor at Rome."

On hearing this appeal, Festus "conferred with the Council". The Council was a council of the chief men in the province, who acted as advisers to the governor. They were styled Consiliarii or Assessores. It was necessary, as a matter of form, to consult with this council, as there were a few cases, such as those persons who were taken in arms against the constituted <sup>h</sup>authorities, in which the appeal could be refused. In St. Paul's case, however, the question was quite clear. The conference accordingly was brief. The appeal was allowed, and the decision was communicated to the Appellant in the words, "Thou hast appealed unto Caesar; unto Caesar shalt thou go."

In St. Paul's case the appeal was not against the judgment of the court below, for no sentence had been pronounced; his appeal was a demand for the transfer of the Trial itself to Rome. He had been brought up for trial ~~for~~ four times, and had been detained as a prisoner for two years. There appeared to be no hope of obtaining justice from the provincial magistrate; he therefore appealed "to be kept for the decision of the Emperor."

The Emperor was constituted the supreme judicial power in the State. He was in all things sovereign - supreme in legal causes, as previously in military.

These preliminaries had already been completed in St. Paul's case. He was already in the state of accusation, Reatus. The proceedings in jure were represented by the Litterae dimissoriae forwarded by Festus, in which the offences of which he was accused were detailed. The case was now in judicio before the judge, i.e., the Emperor himself, on appeal. And Nero most probably presided in person, for he was usually careful about appeals from the provinces.

When the pleadings were concluded, and the witnesses had

undergone examination, it was usual for the crier to announce that the proceedings were terminated, by proclaiming the solemn word Dixerunt. Then the Jury (Judices) voted, by depositing their wooden tablets, coated with wax, in the urn. The sentence, which was decided by the votes of the majority was announced by the Judge in the words non fecisse pidetur (Not guilty). or fecisse pidetur, Guilty, or amplius ( a new trial). ✓

This procedure was subjected to considerable changes under the imperial regime. ~~And~~ Suetonius informs us that it was Nero's practice to decide each count in an indictment by itself, after he had heard the pleadings and the evidence. We can easily understand that it might have been at this stage that St. Paul wrote hopefully to the Philippians. He may have been already acquitted on one or two counts, and may have been expecting a similar result on the third.

The votes of the assessors were not taken in the ancient manner, by ballot, in trials on appeal before Nero. It was his custom to receive from each of his assessors a written opinion; and on the next day, without consulting his assessors as his predecessors had done, he would deliver his judgment in person from the tribunal. In this case, he pronounced the accused innocent. And St. Paul was once more free.

"At my first defence", he writes in 2 Timothy iv. 16. "No one took my part", "But all forsook me", from this statement <sup>we</sup> gather that the Trial was in two stages, and that there was some considerable interval between these two stages, enabling him to give the directions to which we have just alluded.

There are two modes of accounting for this.

If St. Paul were tried under ancient rules, which were still legally valid, though they had of late fallen almost into disuse, the meaning of the "First Defence" would be that he had been duly tried, but had been remanded.

A majority of the Judices had voted N.L. (Non liquet)

the presiding Judge had pronounced the word "Amplius", and an adjournment <sup>li</sup>'ampliato,' had taken place. In this case the "first defence" would have been the Prima Actio, and he was now lying in prison waiting the <sup>u</sup>Sec<sup>u</sup>nda Actio.

It is, however, more likely that there were two counts in this indictment, and that each count, according to the practice followed by Nero, and presumably by his officials, had been tried separately. Under this presumption, St. Paul had successfully defended himself against the first count and was now remanded to prison while preparations were being made for his trial under the second.

In all probability, St. Paul's second trial was, as Clement of Rome says, "Before the presiding Magistrate, ~~ile~~ i.e., before the City Praefect -

The Praefectus Urbi was one of the new Magistrates appointed by Augustus when he reformed the municipal arrangements of Rome, which had become antiquated, having existed since the time of Servius Tullius. He included the whole inhabited district around the ancient city, and divided it into fourteen regions, over each of which he placed a minor magistrate - the Praefectus Urbi being the chief over all.

At this time the Praefectus Urbi had become a most popular and important magistrate, and had acquired powers which had previously belonged to the Consul, the Praetor, and the aediles.

In all probability the presiding magistrate at this second trial of St. Paul was the city Praefect, and not the Emperor himself, i.e. if a second trial did take place.

The close of the Acts of the Apostles seems to be inconclusive and incomplete. St. Luke, after giving an elaborate account of St. Paul's trial before various Roman officials, and of his appeal to Caesar, and even a long narrative of his shipwreck on the voyage to Rome, brings the Apostle to Rome and leaves him there in custody, without giving any hint as to the result of his Trial. We cannot gather from the Acts

whether that imprisonment ended in acquittal or in condemnation. We have been interested in the History of the Trial, and we are anxious to know the result. But we are not told. Professor Ramsay in his "St. Paul, the Traveller and Roman Citizen", advances the opinion that St. Luke appears to have planned a systematic history of the foundation of the Christian religion, especially in its relation to the Roman Empire; and that his plan involved the production of the three Books, each of them <sup>dedicated</sup> ~~dictated~~ to Theophilus:-

- i. The History of our Lord Jesus Christ, the very beginning of the Church, in his Gospel.
- ii. The History of the First Preaching of Christianity, in Jerusalem and the East, as far as to the city of Rome. This we find in the Acts of the Apostles.
- iii. It was obviously intended that there should be a Third Volume, relating the incidents of the Trial of St. Paul before Nero, his acquittal and subsequent journeys to Spain, and other parts of Europe to the West of Italy, concluding with St. Paul's second Trial at Rome and his martyrdom.

The whole plan does not seem to have been carried out; or, if it were, the Third Volume has been lost. And so, as we finish reading the Acts of the Apostles, we grieve to leave St. Paul in bonds. We are anxious to know the result of his imprisonment. Was he acquitted and set free? Was he condemned and put to death? We have been deeply interested in the narrative, and just as the interest is at its height, the Book suddenly comes to an end, and we are left in the dark as to the fate of the Apostle. It is as though the last chapter of a thrilling story were lost. The end of this Book, if it be indeed the end, is most unsatisfactory. The reason why St. Paul appealed to have his case tried at Rome is not far to see. We must remember, as already mentioned, that he was well versed in the Laws of Rome, and he felt that the Eastern Provincial Governors were not administering Justice according to the Law, although

they were trying to copy the legal procedure as carried on at Rome. We must also remember that the most bitter enemies of St. Paul's Christian Campaign, were his own people, the Jews. Further, the Provincial Governors in the East so easily gave in to the demands of the Rabble. Conscious of this injustice, the Apostle made up his mind to appeal to Rome, knowing full well that there he would get justice. It is the custom, very often in courts of Law, for a prisoner to plead "Not Guilty", although the language of his conscience declares him to be "Guilty".

All through his trials St. Paul pleaded "Not Guilty" to every charge, and we feel certain that it was the language of his conscience. Many preachers, lecturers, and writers, have waxed eloquent in their descriptions of the character of the Emperor Nero, but a great deal of it is imagination and lacks historical foundation. Roman Historians, such as Theodore Mommsen and J.B. Bury, give us quite a different account, and they credit Nero with a high sense of justice. St. Paul, knowing this, would feel confident that Nero would set him free.

Without attempting to solve the riddle of St. Paul's second imprisonment, we may point out that some help is supplied by the Papyri. An Imperial Edict is preserved which refers to the treatment of Criminal Cases which, owing to appeal, came before the Imperial tribunal. This most probably dates from the time of Nero. It shows us that in such cases a very long time elapsed before the parties came before the Emperor. Claudius had first laid down certain rules to remedy this state of affairs. That Edict is made known to us at the beginning of the Neronian Edict. The duration of the intervals, between which accuser and accused had to present themselves from the provinces before the Emperor is not stated. As this Edict did not produce the result anticipated, Nero decreed fresh regulations, according to which, among other things, in Capital Cases for

Transmarine accusers and accused, an interval of a year and six months was laid down for appearance before the Emperor. We also learn that according to the Edict of Calpurnius, no trial before the Emperor took place, if none of the parties put in an appearance. Now in any case, as far as Paul was concerned, he was in prison and could be got at, at any time, but, according to the impression we get from the Neronian Edict of the delay and slackness of arrangement in the treatment of cases of appeal, the supposition would not appear to be excluded, <sup>that</sup> ~~that~~, even in such a case, no trial took place before the Emperor, and the accused obtained his Freedom.

Now the account sent forward by Festus to Nero was most favourable to St. Paul, and since the distance from the East to Rome was so great, and the journey so expensive, and the accusers feeling that they had a poor case, it is more than probable that these accusers never came to Rome. This leads us to the inevitable conclusion that St. Paul was set free after the specified time had elapsed, and that he died peacefully in his own house at Rome, and was buried respectably by his friends. His martyrdom then depends on a legend, and we know that mediaeval legends have embellished the story of his martyrdom with stories that are simply fantastic.

As long as the world lasts, the memory of this great man will be revered by generation after generation. His was indeed a great name; for to him, more than to our Lord Himself, was due the formal expression of those doctrines of the Church, which were built up by him by means of legal and metaphorical language.



## INTRODUCTION

TO ROMAN LEGAL TERMINOLOGY IN THE EPISTLES OF ST. PAUL.

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A learned judge is reported to have said "In the Roman Law there is a mine for the interpretation of the writings of the Apostle Paul, all unworked."

("The Thinker", July 1895. Page 40.)

Such a method of interpreting St. Paul has not appealed with any force to our modern commentators. Indeed the study of Roman Law has been generally regarded as so alien to the domain of Theology, that it has been almost wholly neglected by modern Biblical and Theological students. Yet it may be said that there are inter-relations between all intellectual pursuits; and as Christianity unquestionably affected the substance and modified the theories of Roman jurisprudence, at any rate from the time of Constantine, so it may well be believed that Roman jurisprudence provided early Christian teachers with language and modes of thought by means of which they gave expression to the truths which they desired to propagate.

All Christian teachers will agree that St. Paul was the chief interpreter of Christian Doctrine to the Gentile nations. The conversion of the Jews involved the task of harmonising the superstructure of Christianity with the ancient foundations of the Mosaic Law. But in the case of the Gentiles the foundations were lacking, and it was therefore necessary to enunciate a complete theory of natural and revealed truths.

Without St. Paul, or someone like him, imbued with Gentile culture, it is difficult to see how the Christian religion could have extended beyond the confines of Palestine. In this culture he was a marked contrast to his colleagues in the Apostolate, and especially by the fact that he was a Roman citizen. In his time the citizenship of Rome was much more than a social distinction. It was accompanied by incidents which affected every relation of life. The Roman citizen was

constantly confronted with the technical distinctions between his position and that of the Roman subject who had not received the status of a citizen. In the routine of business, in the making of contracts, in the payment of taxes, in the field of litigation, in the making of wills, and in succeeding to inheritance, the Roman citizen was placed by law in a different position from a non-citizen. At that period there existed no professional class corresponding to our modern solicitor, for the jurisconsults were teachers or professors rather than practitioners of law. To the Roman citizen some considerable knowledge of law was more than an advantage, it was indeed almost a necessity. It was a contemporary force in daily life. As Westenberg remarks - "Who could imagine a Roman citizen, learned, erudite, wise and yet ignorant of Roman Law? Certainly the Romans almost down to those times, after the example of the Spartans, who, according to the law of Lycurgus, committed the <sup>Patrician</sup> ~~Patrician~~ to memory, learnt the laws of the XII Tables by heart, and afterwards the <sup>Prætor</sup> ~~Prætor~~'s edicts as necessary formulae. Nor do the legislators allow citizens and subjects to be ignorant of the law. Nay, that our Paul was by no means ignorant of Roman Law, but was well, acquainted with the law as affecting citizens, is clear from the fact that ~~when~~ necessary to support his conscience and support a good cause, he knew how to make use of Roman Laws."

*Joh. Ortwin Westenberg, Paulus Tarsensis Jurisconsultus  
sen<sup>ior</sup> dissertatio de jurisprudentia Pauli  
Apostoli Habita (1732) page 13.*

(This book is recommended by Dr. Deissmann and I think can only be seen at the Bodleian Library.)

The Roman people had an innate genius for law. They found their highest intellectual pursuit in the science of jurisprudence. A deep reverence for law was one of their moral characteristics, and in order that it might be inculcated from the earliest years, legal training was a part of the Roman system of education, and the children were obliged to repeat

from memory the code of the Twelve Tables. This code was to the Roman youth what the catechisms of the various churches are to the children of to-day. The case of Cicero supplies an illustration of this; he states that as a boy, he was taught to repeat by rote the text of the Tables.

"Discebamus <sup>2</sup>inim pueri XII, <sup>1</sup>at carmen  
necessarium" Cicero De Legibus ll. 59.

In early Roman times the Patricians jealously guarded from the Plebeians the knowledge of the law, hence the frequent and bitter disputes, arising from its uncertainty. This was terminated in B.C. 451., when a code of law was compiled, inscribed on tables of bronze, and placed in front of the Senate House. The inhabitants of distant provinces came to rival the Romans themselves as masters of the national science, and at a time not long after the death of the Apostle Paul, Gaius, who like him, was a native of Asia Minor, became the greatest jurist of the age.

It is only when we call to mind how closely the Roman law affected the daily life of the great mass of the subjects of the Empire, and how deeply the study of jurisprudence imbued their minds, and coloured their ideas, that we obtain an adequate sense of the forcefulness of many of St. Paul's allusions, or duly appreciate the appropriateness of some of the lines of his arguments, and the metaphors he uses to teach Christian Doctrine. Further, we must remember what was the Apostle's attitude towards the legal institutions and administration of the Roman Empire. He himself, had a pride in his connection with the Empire, and he considered the government as divinely ordained. His attitude towards the civil power is well expressed in the opening verses of the 13th Chapter of the Epistle to the Romans. Of course, it must be remembered that when the Epistle was written, the Roman Empire

had not appeared in the character of a persecutor. Persecution had, up to this time, come from the Jews, or from popular riots. To St. Paul, the magistrates who represented the Roman power, had always been associated with order and restraint. The persecution of Stephen had probably taken place in the absence of the Roman governor; it was at the hands of the Jewish King Herod that James, the brother of John, had perished. At Paphos, at Thessalonica, at Corinth, at Ephesus, St. Paul had found the Roman Officials, a restraining power and all his experiences would support the statements which he makes about the civil power, "The rulers are not a terror to the good work, but to the evil." "He is a minister of God to thee for good." "He is a minister of God, an avenger for wrath to him that doeth evil."

We therefore judge then that as there was a general knowledge of Roman law among the people, it was not out of place for the Apostle Paul to make frequent references to it, and to couch his theological conceptions in Roman legal nomenclature. The ordinary people would have some idea of the significance of his words, inasmuch as they were familiar with Roman legal conceptions.

We have come to the conclusion that there is no question as to St. Paul's obligation to the Imperial rule, and administration, increasingly manifested as it is by the course of modern investigation, but the extent of his debt to principles and institutions of contemporary law, as a means of expounding doctrine, is a subject of discussion. Some have insisted that his references are only of a vague nature, and consequently appeal to them for exegetical purposes must be barren of result. It is needful, however, to recollect that these references were employed in an age when, as previously stated, men attached the first importance to a knowledge of their renowned jurisprudence. Accordingly, such allusions, far from conveying an indeterminate signification, spoke forcefully and with an import self-evident to his readers. Otherwise

we should be compelled to believe that the apostle's keen perception was at fault in employing metaphors unfitted to facilitate comprehension of his teaching.

On the other hand, we do not adopt an extreme view, as some writers have maintained, e.g. Halmel of Vienna; who seeks to prove that Paul was an expert in Roman Law. We would not assert that the more careful examination of these references will unfold new truths, but it is unquestionable that passages of the Pauline Epistles, obscure to many readers, will impart a clearer interpretation and reveal fresh aspects of truth, if examined in the light of Roman Law, or its Hellenistic form.

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ROMAN JURISTIC TERMINOLOGY IN THE EPISTLE TO THE ROMANS.

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It is a peculiarity of Paul's thinking, that in the handling of certain themes, his mind moves predominantly in the sphere of legal relations. The fact is doubtless due to his acquaintance with law, both Jewish and Gentile. Some writers, such as Dr. Anton von Halmel of Vienna, believe that St. Paul was familiar even with the profoundest technicalities of Roman law. Without endorsing this extreme position, one cannot but be convinced that no interpretation of Paul's doctrine can be correct which ignores the Apostle's training in Roman law.

It is known from Strabo's testimony that many professors of Roman law went forth from Tarsus to lecture in the great centres of learning,<sup>(1)</sup> and some have believed that Roman law was part of the curriculum at the University of Tarsus, where Paul received his early education. Roman law was rich in principle, logical exactness, and scientific method, and we cannot read the first eight chapters of this epistle - the doctrinal part - without noticing that the apostle introduces the principles of Roman law with so obvious a design and purpose, that without some acquaintance with those principles as applying in his day, it is impossible to follow closely his arguments and illustrations. A great deal of light is thrown upon some of his greatest theological conceptions by remembering that as St. Paul was the principal formulator of Christian doctrine, as it has passed on to the Church, he was at the same time especially the interpreter of the Gospel to the Gentile nations - τοῖς βαρβάροις who were not necessarily, though Greek speaking, Greek in their modes of thought.

In Romans, Chapter 1. 14. he acknowledges that he is a "debtor" to the Greeks and to the barbarians. The word "debtor" is a contract term of legal meaning, whose significance was great. Our word "debtor" is a very inadequate

1. Art. "Tarsus" in Hastings D.B. by Ramsay.

translation of this legal term. There were four types of contract in Roman law - the verbal, the literal, the real, and the consensual. Contracts rested on agreements, and every contract was an enforceable agreement. A legal obligation differed from an obligation of honour by creating a legal tie (vinculum juris) between the parties.<sup>(2)</sup> This tie was essential, and was unloosed (solvitur) when the debtor performed his duty. Until this "obligatio ex contractu" was discharged, he was under bond.

Chapter ii. 1-16 deals (a) with the "Justum Judicium" of God, and (b) the "Jus Naturale."

(a) The whole passage is, indeed, forensic, even if we admit that the expression "respect of persons" is not equivalent to the term "privilegium". The doctrine of the "Jus Naturale" of the succeeding verses is unquestionably one of the basic principles of the Civil Law. The famous term "justificatio" to which we call attention in a later chapter is employed in a technical forensic sense throughout the Epistle to the Romans; the expressions, "bearing witness", "accusing and excusing", belong to the same category; in fact, the more we examine the passage<sup>ii.</sup> 11. the more we realise how reminiscent it is of Roman Law. The word  $\pi\rho\sigma\phi\acute{\omicron}\pi\omicron\lambda\eta\psi\acute{\iota}\alpha$  (respect of persons) is also a technical term, which conveys the following meaning - a gracious reception given to a suitor, and also to show partiality, or corrupt judgment.

(b) The Stoic Jus Naturale: With St. Paul νόμος is an oft repeated and characteristic word. He does not confine its use to the law of Moses. With him it is a much wider term, and sometimes almost personal. He refers later on in this Epistle to the law of the spirit of life, the "lex peccati", the "lex fidei", the "lex factorum." In Chapter 11. 14-15, the apostle recognises the voice of nature in the heathen, by which they do the things which are really enjoined by the law of God. (φύσει τὰ τοῦ νόμου ποιῶσιν)

There is after all a higher voice than the law of commandments maintained in ordinances. There is a law recognised by all men of whatsoever nation they may be. It is in the forum of conscience, and in the better sense of aggregate man, that this righteous law is discovered. So Aristotle had maintained long ago.(1)

Writing now to Romans, the appeal to a "lex scripta in cordibus" of all men, would find an echo in their ideas of a law of nature. It is this law which contains the primary principles of right and justice which the Roman saw to be common to all men. It likewise underlay the rigid rules and forms of the Mosaic Code. In both cases man was pointed to a code of exceeding high sanction, which without special revelation, he felt constrained to recognise. Thus in a larger sense than to the Jews only, the law was our schoolmaster (*παιδαγωγός*) to bring us to Christ; for now the apostle goes on to show how Christ is Himself not only the end of the law for righteousness, but how a new law of life and conduct is stepping in to accomplish that which the law of Moses, equally with the law of nature, failed to do, namely, to set men free from the law of sin and death. Thus with St. Paul, the very idea of law is raised unto a lofty metaphysical sphere of an abstract principle or power.(2)

According to Gaius and Justinian the "Jus Naturale" belonged to the primary definitions and divisions of law. "In the history of law as well as of theology, it plays a considerable part. As connected with civil jurisprudence, it is exclusively Roman. Here Cicero and St. Paul, old philosophy and later legalism, stand on common ground in many respects. Later and modern philosophy, too, has taken it up. Conscience (*συνείδησις*) in the man, equity in the law, the progress of jurisprudence and legislation, as well as of private and

1. Pp. 104.105.

2. Romans VIII. 1-8.



national ethics, and moral theories of republican reformers and philosophers, have drawn literally upon the beautiful idea of nature's law, though its significance and meaning may have been widely different in the various cases."<sup>(1)</sup>

In this connection, it may be added, many have imagined that St. Paul was indebted to Stoicism for not a few aspects of his teaching. Undoubtedly there is a remarkable correspondence, especially with the ethics of Seneca, so that some have argued that this Roman philosopher was acquainted with St. Paul and with the New Testament. The true reason, however, for the resemblance lies in the fact that Jewish thought and Stoicism had much in common, and it is exceedingly probable that the genesis of the latter is to be found in Judaism. The agreement was remarkable; belief in one great supreme Being; the impossibility of representing the divine nature by means of things material; the ultimate extinction of the heathen deities and the existence of Providence (*Πρόνοια*). Such were some of the conceptions, common to Jew and Stoic. The correspondences are so numerous and striking that they cannot be regarded as mere coincidences in thought. An example is afforded by St. Paul's use of the term conscience (*συνείδησις*) Romans ii. 15. Apart from his use of the word it does not occur in the New Testament except in the Epistle to the Hebrews and 1. Peter; and since it was not employed in the Old Testament the question naturally arises, what origin, other than Stoicism, can be assigned for a term of frequent application by the Apostle, and yet one foreign to Hebrew thought? That he should have been familiar with the doctrines of Stoicism is not strange, as he must have had many opportunities, during his early manhood, of listening to the daily disputations of teachers from the celebrated Tarsian School, who invaded the market place and streets of his native city in their zeal

1. Dr. Hicks: "Roman Law in the New Testament."

for the propagation of their doctrines. One can scarcely doubt that St. Paul has in his mind the "Jus Naturale", as he makes his indictment of the Gentile nations in this second chapter of Romans.

Now, this Stoical law of nature suggested much to the Roman jurists, which they expressed in their Praetorian law and in order to illustrate this we cannot do better than quote the words of Dr. W.E. Ball: "The ancient Quiritarian law, elaborately ceremonial in its character, was regarded as the peculiar heritage of the Roman citizen. Foreigners were jealously excluded from participating in its benefits. A separate system and separate tribunals were established for those who were outside the pale of citizenship. Every student of Roman law knows how this subsidiary system, distinguished for its extreme simplicity, and based on reason instead of immemorial usage, was gradually brought into competition with the old Quiritarian jurisprudence and finally superseded it. Originally disliked and despised, the Praetorian law, by means in part of the Stoical philosophy, came to be the object of peculiar admiration. It was lauded as the law of nature, restored from the golden age; it was eulogised by the name of equity." (1)

Now, we find that the Roman lawyers often confounded the "Jus Gentium" with the "Jus Naturale". The wider the Roman dominion spread, the wider became the views of their jurists, and in this way arose the notion of a law, common to the Romans with other nations, and with all mankind.

To return<sup>to</sup>/the 2nd Chapter of Romans, Paul makes both Jews and Gentiles inexcusable, inasmuch as they had the "lex scripta in cordibus suis." (Chapter ii. 14. 15.) This is the moral law - the law of man's nature as well as God's nature - a law both universal and unchangeable. This is no doubt the law

which the Stoics designated "Jus Naturale", and which resembled the Praetorian law of Rome, already referred to; a law interpreted by nature and conscience. The Gentiles were responsible and inexcusable because they conformed not to this law "lex scripta in cordibus suis"; the Jews on the other hand were responsible because they kept not the Mosaic law nor the "lex scripta in cordibus suis." It is, therefore, an axiom with St. Paul that man is naturally religious, nevertheless he holds, that it is difficult, nay, impossible ~~for~~ man to be saved by the light of nature, not because the light is inadequate, but because he cannot perfectly follow it. In the course of the argument, the apostle shows that the responsibility of the Jew was still greater, because in addition to the law of nature, he had the Mosaic law. But a Jew cannot be saved by the ten commandments, not because the ten commandments are insufficient and inadequate, but because man is morally powerless ~~to~~ perfectly <sup>to</sup> obey them. This inability is caused by the "lex peccati" in his nature. Further on in this Epistle (viii. 1-8), we find that the law of the spirit of life in Christ Jesus is able to make both Jew and Gentile free from the law of sin and death.

CHAPTER iii: The whole atmosphere of this chapter is forensic. In iii. 4. the passage, though indeed a quotation from the Hebrew Psalter, is distinctly forensic, and falls in at once with the apostle's present line of thought. The Deity is not here regarded, but is represented rather as a party impleaded. The defendant, if cleared of blame, may well be said

νικᾶν (to overcome) since he it is who carries his cause. God is shown to be, when reproving or condemning men, altogether just; in fact, to be vindicated even in the eyes of objectors, as to His "justum judicium."

Again in the next verse, iii. 5. the μὴ ἄδικος ὁ θεὸς ὁ ἐπιφύρων τὴν ὀργάν is spoken "after the manner of men", we may, perhaps, see the thought flashing back to the primitive notion

of human justice and retribution, when personal wrongs were sufficient ground, under varied circumstances, for varied and extreme forms of vengeance, Is God then, *κατὰ ἀνθρώπου* unjust?

"The earliest administrators of justice simulated the probable acts of persons engaged in a private quarrel. In settling the damages to be awarded, they took as their guide the measure of vengeance likely to be exacted by the aggrieved person under the circumstances of the case." The manifest and the non-manifest ~~there~~ suffered very differently. The hot blood of the injured party was allowed as full play in the laws of the Twelve Tables as in many other ~~Aide~~ codes. ~~There~~ may doubtless be injustice, argues the apostle, in the case of a man. But with the Deity not so, even though, "He taketh wrath", for <sup>(1)</sup> He "judicabit mundum."

Further on in iii. 19. we are still in the forum. The whole atmosphere is law. The term *ὑπόδικας* is a metaphor suggesting the idea of a trial as between God and His people. All men have offended against God and owe a great debt to Him. The majesty of condemning justice sits supreme. The very "lex" heretofore spoken of finds its only place here as handing over the guilty race to the inexorable sternness of a law which is condemnation upon all. Then there arises yet another "lex" supreme ~~over~~ both these; the "lex fidei", which puts out of court the "lex factorum." And this law has principles of its own, so perfect and adapted, that it is vindicated by its own nature as a "lex", indeed, to which the mind of one "scientio legem" cannot but agree; a law which actually triumphs in the complete justification of the criminal, and that so justly, that it re-establishes the old law which had been dishonoured.

1. See Maine's Ancient Law. page 378.

## CHAPTER V. Justification by faith as based on legal fiction.

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The term "justificatio" with which this chapter begins, is employed in a technical forensic sense throughout this epistle, and this must be borne in mind in its interpretation.

Sir Henry Maine refers to this chapter when he shows how "the nature of sin and its transmission by inheritance - the debt owed by man and its vicarious (representative) satisfaction - the necessity and sufficiency of the Atonement" were the points which the Western or Roman Church took up with peculiar avidity. (1)

Justification involves subjective spiritual processes verified by his own experiences, and out of that experience he speaks. He anticipated the objection of those who might disparage the doctrine as tending to Antinomianism, for he realised that men might rest content with its merely objective aspect and be satisfied with a claim to release from condemnation through the vicarious sacrifice of Christ. Therefore he introduces the figure of adoption to reveal the subjective side of justification, in the absence of which the Atonement is short of its power as a dynamic for a life of holiness.

Inasmuch as Justification by faith in Christ is the main theme of this epistle and the most prominent feature of St. Paul's theology we will now consider

### JUSTIFICATION BY FAITH AS BASED ON LEGAL FICTION."

One of the agencies by which Roman Law developed was termed "Legal Fiction" by the classical jurists. "Fictio" in old Roman Law, is properly a term of pleading, and signifies a false assertion on the part of the plaintiff, which the defendant was not allowed to traverse, such for example, as that the plaintiff was a Roman citizen, when in truth, he was a foreigner

(1) Maine's Ancient Law, page 357.

the object being to give jurisdiction. Roman law abounded in such fictions. The laws of "postliminium" and "adoption" were based on legal fictions, to both of which we have occasion to refer in other parts of this thesis.

Gaius in his fourth book of "Institutes" gives several examples of legal fictions. We will quote one. "Further we have fictions of another kind in certain formulae; as for example, he who founds his claim on the edict for possession of the property, sues as feigning himself heir. For since he succeeds in the place of the deceased according to Praetorian law, and not according to Civil law, he has no direct action, and he cannot allege that to be his by the law of the quiritēs, which was the property of the deceased, nor can he allege that which was owing to the deceased ought to be paid to him; hence on the fiction that he is the heir, he draws up the claim."<sup>(1)</sup>

If a person purchased something from one who was not really the owner of it, the purchaser could become the real owner of it, after a certain lapse of time. If an action was brought to recover the article from the purchaser, the latter was allowed to state that he had owned it for the time specified by the law, as necessary, in order that he should become the real owner, although the time had not elapsed.

In Roman civil law an obligation can never be assigned. Even if the creditor sells and assigns his right to another, the right to sue does not thereby, according to the civil law, pass to the assignee, but continues to reside in the creditor (assignor). The praetor, however, gives the assignee the assignor's right of action - the right to contend, and he instructs the iudex to treat the assignee as the real creditor, and to decide accordingly.<sup>(2)</sup>

1. Gaius iv. 34. Page 523.

2. Sohm: Roman Law, page 273.

Now, it is necessary to notice that these fictions had true legal force; they were not pretensions or imitations, but realities in law. To sum up, "fictio", meant treating a person as heir, who~~y~~ was not the heir; looking upon a person as a creditor, when he was not the real creditor; for the sake of procedure, a person was given a legal status who had no right to it.

Looking at the doctrine of justification by faith from a forensic angle, it meant the placing of a man in the statu~~us~~ of a just man, although he may have none of the ethical qualities of justness. It does not mean "making righteous" but "reckoning righteous".

We will now try to follow the apostle's argument on this central theme of justification by faith, and we must begin where he did, from the negative standpoint, from the futility of law as a means of salvation, and the futility of man's own efforts after righteousness.

If a man could bring his actual <sup>up</sup> to the ideal of the law, he would obtain life. But in this he has utterly failed. The only condition of life under the law is perfect obedience to its demands. For it is of course the idea of righteousness i.e. fulfillment of relations, that dominates the apostle's thoughts throughout. He begins with his own experience as one typical of that of the Jewish people as a whole. His supreme aim in life had been the attainment of a Phari~~s~~saic ideal of a righteousness according to law. The more faithful he was to the precepts of the law, the more sure did he feel of winning the favour of God. And being a man of powerful imagination and an ardent religious temperament, he wrought himself into a white heat in his efforts to reach the desired goal. But he was too honest and clever to deceive himself into believing that he had attained it. Do what he might he was never satisfied and he came gradually to the conclusion that "by the works of

the law shall no flesh be justified in His sight." But what he could not find in the works of the law, he found through the hearing of faith. The gospel is the power of God unto salvation because therein is revealed a righteousness of God by faith unto faith. "Being justified freely by His grace, through the redemption that is in Christ Jesus." Man longs to come to a right relationship with God and so find peace. Paul says we can never find this peace *by* anything that we do, or say, or think, but only as we are justified by faith. And here we must ask what he means by being justified. It may mean either "make righteous" or "count righteous", i.e., it may either be a moral term, or a legal, judicial, forensic term. And the great question is, in which of these two senses did Paul use the word? There can be no hesitation about our answer. If it means "to make righteous" then it has a moral signification; if it means "to count righteous", then it has a legal or forensic signification. We have no doubt that Paul uses the word in the latter sense. It means with him "to count" or "to reckon righteous". In spite of much opposition this meaning has gradually vindicated itself against the other, and is now almost unanimously held by all scholars who have a right to speak on the subject. So when the apostle says a man is justified in God's sight he means that God regards him and treats him as a righteous man, just as in English law a man is regarded and treated as innocent till he is proved guilty.

And this justification comes by faith, as the apostle says, in the case of Abraham, "his faith was reckoned to him for righteousness". Righteousness, (*δικαιοσύνη*), in all its meanings whether ethical or forensic, has the idea of law at the back of it. The argument in the first five chapters of Romans takes for granted the elementary ideas that enter into the concept of law. It assumes that law takes cognizance of the moral actions of free intelligent persons, that it involves obligations and rights, and that the law provides rewards or



punishments. The argument aims not to prove that sin exists, or that men are sinners, but that as sinners they are personally responsible, accountable to the law, and subject to its condemnation. It is distinctly forensic in terms and method.

It is of importance to bear in mind that *δικαίος* and its cognates, do not in themselves contain the idea of moral excellence, only that of an objective relation to the law. Legality, not virtue, is the essential factor. In his chapter on Justification, Dr. Beyschlag deals with the biblical meaning of *δικαίω* and maintains that St. James and St. Paul derive the word from the same source. He draws a line of distinction between what he calls "justificatio justi" and "justificatio injusti", the latter being St. Paul's *δικαίωσις*. The word *δικαιοῦν* describes in the Old Testament the action of a judge, who declares a man innocent and so the word justify in the so-called forensic sense, as borrowed from legal speech, has become a current expression for acquittal; it is a declaration of innocence. But in the New Testament two possible senses appear; He who is really righteous may be recognised as such, but an unrighteous man may also be acquitted." (Dr. W. Beyschlag: "New Testament Theology". Vol. 1. page 363. Translated by Rev. N. Buchanan. 1896.)

CHAPTER VI. interpreted by ROMAN EMANCIPATION from SLAVERY.

CHAPTER VI. Dr. R. J. Campbell in one of his published sermons states that it is impossible to understand this chapter without the help of Roman Law, and with this view I cordially agree. One is surprised that Sanday and Headlam in their "International Commentary" make no reference at all to Roman Law in their exposition of this chapter.

In this chapter consistency of life is urged upon Christians, upon the soundest logic, again springing from legal principles. "He that has died is justified (*δικαίωται*) from sin." He is not only freed from it as a mortal condition,

and one of servitude, but is acquitted of its claims and penalties. The argument is of course forensic. A glance at Scottish theology, where the juridical language of the Reformers is found to have taken root in a soil peculiarly apt, shows clearly the strength and wideness of the old jurisprudence in its influence on the conceptions of the Western mind. The late Dr. Horatius Bonar has the following remark on this passage, which he illustrates in the strictest judicial spirit:-

"He that is dead, is free from sin." More/correctly: "He that has died is justified from sin." So is, literally, the word "freed". Horatius Bonar makes the passage run thus: "He that dies (and so exhausts the law's penalty and claim) is justified (or has been justified) from the sin."<sup>(1)</sup>

In the terms of the old Scottish jurisprudence "justify" means to suffer the penalty of the law, so that a justified man would mean, one who had completed his term of punishment and so was free.<sup>(2)</sup> Again, "Redemption forms a new obligation to law keeping, as well as puts us in a position for it."<sup>(3)</sup>

Is there not here an echo of the "obligatio ex contractu?"

In the passage before us, moreover, the man who is dead to sin has done with it for ever, and left it as a country to which he is never to return. Here the apostle has two analogies.

In the first place to the citizen. As Christ by His death passed out of the "dominium" of the mortal state, so must His followers too, even as by the "jus postliminii" of the Romans the former condition of the citizen was absolutely suspended, and if he died without returning, was altogether annulled.

By direct reasoning, it is Christ who is dead to the one state, and alive across the frontier to a new and different one.

By a reflection of thought it is the "lex peccati" that has lost its rights by banishment, and men are now free from its

1. In Roman law it is the "Capite Minutus", discharged from all civil debts previously incurred.
2. Horatius Bonar: "Way of Peace", p. 70.
3. Ibid. page 150.

control. Let nothing bring back that now dead dominion.

Secondly the analogy is to the slave. It should be noted that the word translated "servant" in this chapter should be rendered "slave". The "servus" has changed his "status" by manumission, and is exhorted to continue in the service of perfect freedom. The chapter closes with a powerful appeal to the principle so familiar to every Roman of "legal consequence united to legal causes by an inexorable necessity, and to the *'juris vinculum quo necessitate adstringimur alicujus solvendae rei'*."

"But now, being emancipated from sin, and become slaves to God, we have your fruit unto holiness, and the end everlasting life." vi. 22.

#### CHAPTER VII. INTERPRETED BY THE "JUS POSTLIMINII."

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The sanctions of the laws of marriage supply in the seventh chapter an apt example and a powerful argument for the Christian to live evermore as alive to Christ and dead to sin. "I speak to them that know the law", says the apostle. Here again, as in the previous chapter, there is a shadow of the "jus postliminii" in the background. The dread of a return to the dominion of sin is felt as that of a possible return to a practically dead tyrant might be, who by the fiction of "postliminium" would be able to call back to life all his former rights over one who seemed to have escaped them by exile and banishment, or by reflection by its exile and banishment. The words of Justinian(1) explain this. "If an ascendant is taken prisoner although he becomes the slave of the enemy, yet his paternal power is only suspended owing to the "jus postliminii", for captives, when they return are restored to all their former rights ..... "The postliminium" supposes that the captive has never been absent ..... So too, if a son or grandson is taken prisoner, the power of the ascendant by means of the

1. Institutes l. vii. 5.

"jus postliminii" is only in suspense. If a captive did not return, the law considered him to have died at the moment of the commencement of his captivity. So in St. Paul's argument we are Christ's captives, though as such now really free; consequently we are dead to the old dominion and state of sin, though to us it appeared a condition of freedom. The reversal of the members of the analogy does not invalidate it, as see verse 6.

Throughout the chapter, Christians are earnestly entreated to remain and live in the new state and not to return to that to which we are now dead.

#### CHAPTER Viii. vv. 1-14.

In this chapter we are lifted into a brighter and clearer atmosphere than has yet been attained. "There is therefore now no condemnation to them that are in Christ Jesus", viz. those who were justified, that is, set legally right in the eyes of God. ( v.1.) They are "in Christ Jesus," as the ground of their acceptance, as the sphere of their activities, and in the sense that they have derived from Him their spiritual life. For these people there is no condemnation. (κατάκριμα

Now one of the many debts which we owe to the modern discoveries of those who have been lately deciphering for us the Greek papyri is this, that the word *κατάκριμα* has a different sense from what we have imagined. The word in the Greek has not only a criminal but often a civil legal signification. It refers to land on which there is a legal embarrassment, a restrictive covenant, a ground-rent, or possibly a mortgage - the dead hand of the past pressing upon the tenure of the present. The estate must be guaranteed free from that.

There is ~~therefore~~ therefore now no disability, says the lawyer, when he makes the conveyance and passes over or transfers the estate. And in this light we can see that this

It is precisely what the apostle is demanding here. The believer is crying out under the pressure of the dead hand of the past, which is cramping and controlling his present. "Who shall deliver me from the body of this death?" (vii. 24.) And here is the reply, "Are you in Christ Jesus? There is therefore now no disability." "In Christ Jesus - the sphere where all spiritual effectiveness is experienced. The ransomed slave must abide in the environment of the god who purchased him. All blessing is there, all spiritual efficacy, is through Him, whether for witness, or speech, or progress. And the believer's victory is not in spite of, but through the body. And the apostle in the first fourteen verses of this chapter speaks of five great disabilities or handicaps to which we are subjected in our daily life, viz. the disability of the perverted desire, the unguarded heart, the rebellious will, a fearful heart, and a puzzled mind.

The conclusion of the apostle is then that there is no disability, no handicap, no legal embarrassment, that need hold back the child of God, who walks not after the flesh, but after the spirit.

#### CHAPTER viii. 14-24.

(a) Adoption.      (b) Heirship.      (c) Inheritance.

In Chapter Viii we pass to another element of Roman law. From verse 14 to the end, the law of adoption is the ground of the apostle's argument. Not only is the word "adoption" peculiar to St. Paul in the New Testament, but the idea also. The beautiful metaphor, as used by him, can only be explained by reference to this great principle of Roman Law. In our country we use the term colloquially, and sometimes adopt it in a free way of our own, but it has no place in our laws. English Law, generally speaking, does not recognise adoption as involving any right on the part of the child. An English

adoption, with its elements of capriciousness, its liability to sudden termination, its almost entire immunity from legal sanction of any kind, would have been a most unfortunate illustration, since the object of the apostle was to awaken men to the full realization of their glorious privileges, to enable them to comprehend the certainty, the closeness, and permanence of that bond which united God to them as their Father, and them to God as His sons; to assure his readers that the covenant which God makes with every believer in Christ Jesus is not a capricious undertaking, likely to be broken at any moment, but a pledge to be observed by Him in all its fullness, because grounded on eternal truth and justice. This deep spiritual concept was among the most difficult of statement and translation into current thought.

Adoption in a legal sense, moreover, was not known to the Jews. With them it was hardly even a social incident. The family records of the chosen people were kept with scrupulous care, in order that the lineage of the Deliverer might be identified. Fictitious kinship was not traced in their genealogies.

The same might be said with greater force of the Hebrew nation. With the Romans, however, it was an important means of the extension of the legal family. The adopted son was as truly and really representative of his adoptive father, for all purposes of succession, as a son born in the "matrimonium justus". The adopted son took a higher place than mere blood relations. The "familia" depended on the "agnatic" group, and the merely cognatic were ignored. Supposing there were no male heir, by adoption or arrogation, the desired end could at once be accomplished. The person thus brought into the family assumed the family name, "partook in its mystic rights, and became not on sufferance or at will, but to all intents and purposes, a member of the house of his adopter; nor could the tie thus formed be broken, save through the ceremony of

emancipation."<sup>(1)</sup> His former personality was extinguished and dead. If he had been "sui juris" his old debts could no longer be charged against him. In the eye of the law the adopted person was a "new creature". He is born into a new family. Indeed, so complete is the change that has taken place that inter-marriage between the newly formed relations was as strictly forbidden as if they had been related by blood.

The Pauline phraseology which incorporates the beautiful metaphor of adoption is one of the most important examples, as reflecting the influence of Roman law on theological and devotional thought. St. Paul exchanges the physical metaphor of regeneration for the legal metaphor of adoption.

Before we give a description of the process of adoption we will try to answer two questions, namely, (1) Why did Paul make use of this metaphor of adoption and not the current term "regeneration?" (2) How can it be proved that he is not referring here to Hebrew or Greek, but to Roman adoption?

In answering the first question we must bear in mind the difficulty the apostle experienced through the extreme poverty of Gentile conceptions of spiritual truth. The Christian teachers who laboured to win the Jews had but to erect the superstructure of Christianity upon the foundations of Israel's ancient religion, whereas St. Paul was confronted by the difficulty that such a basis was non-existent among the Gentiles. For them it was necessary to enunciate a theory of natural and revealed religious truth, and without St. Paul or someone like him, imbued with Gentile culture, the Christian religion could have hardly extended itself beyond Palestine.

(1) Dr. W.E. Ball: "St. Paul and the Roman Law."  
page 5.

As Fisher points out in his "Beginnings of Christianity" (p. 511) "When the apostles went to the Gentiles they could not build upon familiar Jewish conceptions. They must find or create an equivalent for them upon heathen ground. They had to lay a foundation in the natural intuitions and conscious necessities of the human soul, apart from all special revelation."

There is no doubt that Paul's acquaintance with Roman law was of no little service in furnishing him with many an easily intelligible analogy and metaphor to make things plain and to formulate a constructive system, appealing to men whose hearts he sought to win. The extent to which he is indebted to Roman law is a matter of discussion, but it is unquestionable that various legal metaphors such as adoption, inheritance, tutelage, manumission were consecrated by him to the high office of conveying his doctrine and facilitating its comprehension by heathen minds, impoverished of spiritual conceptions, and strangers to the novel truths he proclaimed.

(2) As to the second question whether the apostle is referring to Roman or Greek adoption, it is not so easy to answer. Most of the commentators are satisfied that it is Gentile and not Hebrew adoption to which the apostle refers. "One important feature which distinguished adoption among the Greeks from the Romans is that in the former case it did not imitate nature, and thus create fraternal relationship between the adopted son and his adoptive father's daughters. If an Athenian citizen wished to adopt a son, it was necessary in the first place that he should have no living legitimate children who had been solemnly disowned by him, or legally adopted by another citizen."<sup>(1)</sup>

Dr. Dawson Walker in a letter to the writer, states that he thinks the adoption referred to in Romans viii. 15. 16. is

(1) Mahaffy and Golligher: "Greeks, Hellenic Era."  
1910. page 6.



Roman adoption and that because of the combination of the idea of witness with that of adoption - a fact, he concludes, thus points to Roman legal ceremonial. (1)

#### THE ROMAN LEGAL CEREMONY OF ADOPTION.

The common method of transferring a person from one family to another took place in the following dramatic manner. In the presence of five witnesses the person about to be adopted was sold by his paterfamilias three times. The reason for this threefold sale was to be found in the twelve tables which enacted that if a father sold his son thrice he lost his paternal right (patria potestas). A fictitious law-suit then followed, whereby the person to be transferred was surrendered to the adopting father. But the final stages of an adoption and of a sale into bondage were very similar, hence the necessity for the presence of witnesses to testify as to the real intention of the ceremony. Otherwise, in the absence of anything corresponding to our modern legal deeds, misconception might ensue; after the death of the adopting father, malice or envy might suggest that he who had entered into an inheritance had no legal right to possess it, being only a bondsman. In such a case the adopted son had no alternative but to seek judicial aid. In open court he would declare "after the ceremony with the scales and brass, the deceased claimed me by the name of son. From that time forward, he created me as a member of his family. I called him 'father', and he allowed it ..... I sat at his table, where the slaves never sat; he told me the inheritance was mine." But the law required corroborate evidence. One of the five witnesses was called. "I was present", he says, "at the ceremony, it was I who held the scales and struck them with the ingot of brass. It was an adoption. I heard the words of vindication, and I say this

(1) "The Gift of Tongues", Dawson Walker. pp. 171.172.

person was claimed by the deceased not as a slave, but as a son." (1) Then a verdict was given in accordance with the testimony of the witness, confirming the right of the adopted son to the inheritance.

Does not this ceremony explain the language of St. Paul in the fifteenth and sixteenth verses of this chapter? "Ye have not received the <sup>spirit</sup> ~~spirit~~ of bondage again to fear, but ye have received the spirit of adoption, whereby we cry, 'Abba, Father! The spirit itself beareth witness with (ὁ πνεῦμα ἡμῶν) our spirit, that we are the shildren of God."

It is not, then, that the Divine spirit simply addresses the human spirit, as is often interpreted; it is rather that the spirit of God and the soul of the believer both testify to the same fact.

The apostle, then, in this passage employs the figure to illustrate the testimony borne by the Holy Spirit to the Christian consciousness. Now, all who are justified by faith in Christ are undoubtedly the sons of God, but it is equally true that all have not the consciousness of sonship; the lack of which is one of the causes of a type of servile Christianity, alas! only too common and fatal to the spirit of Christian liberty... The believer is to be no longer a servant (slave) but a son.

Adoption in this sense - the ~~believer~~ believer's consciousness of sonship and its resulting filial spirit - is to be distinguished from justification. The act of justification is objective, and should be, but is not always, followed by that normal Christian experience, the subjective spirit of sonship. Where that spirit of conscious sonship is present, it confers an ennobling assurance, inspiring every thought and action of the believer. But many a believer in Christ, because he has failed to realise the full consequence of his adoption

(1) Dr. W.E. Ball. "Contemporary Review." August 1891.

into the family of God, is dwelling in a land of sombre shadow, and needs but to see his blessed privilege in order to pass into an unclouded clime. For a man to know he is justified by a Divine operation is good, but there is, as we have seen, a further accession of spiritual knowledge, not always attained, namely, the persuasion of filial relationship, of exalted privilege, and he who fails to attain this spirit is depriving himself of a precious comfort and encouragement which is his by right, and ought to be his in possession.

So the doctrine of Adoption and the doctrine of Assurance are intimately connected together, and it is no presumption on the part of an adopted child of God to declare his possession of this grace of Assurance. Thus the state of sonship which every Christian possesses is one thing, the rarer spirit of conscious and assured sonship is another; but the Divine intention is plainly revealed, that every believer might be the happy possessor of both: "God sent forth His Son ... that we might receive the adoption of sons." And "because we are sons, God sent forth the spirit of His Son into your hearts, crying 'Abba, Father'." (Gal. iv. 4-6.)

#### (B) HEIRSHIP.

If sons (by adoption) then heirs: heirs of God: (but more) joint heirs with Christ (the Son by right and our Redeemer into sonship).

The notion expressed by the maxim of English law - "nemo est heres viventis" - no one is the heir of a living person - had no place in the early Roman law, for at the moment of birth or adoption a son became the heir of his father. In our day the person who will inherit by the terms of a man's will has no immediate interest in the property, which may at some future time be his; the heir of St. Paul's time was interested in the property of the "Paterfamilias" and reckoned to have been previously proprietor (suus heres) even during

the lifetime of the father. Further, an "indissoluble unity" was considered to exist between the ancestor and his heir, for the testator was considered "to live on in his heir." In the eye of law he survived, for "the elimination, so to speak, of the fact of death", was a principle of pure Roman jurisprudence.

According to English law, heirship connotes death, the death of the father to whom the son succeeds, but God is eternal, hence at first sight the phrase "heir of God" strikes the reader as being unwarranted and absurd.

Let us examine the phrase. We shall first take the expression "heirs of God", as it is commonly understood by an English reader, and consider the two conclusions involved. According to our law, a man may have during his lifetime an "heir presumptive", or an "heir apparent", but strictly speaking, he can have no heir. It is death, the death of the ancestor, which brings the heir into existence. According to Blackstone on <sup>title</sup> ~~little~~ Descent, "by law no inheritance can vest, nor can any person be the heir of another till the ancestor is dead." Hence we find that according to the common interpretation, the absurd deduction is involved that God, like man, is capable of death; for as we have seen, without the death of the person from whom he inherits, the heir does not exist. We pass from that preposterous conclusion to the only other alternative. This remarkable phrase "heirs of God" implying succession to an Eternal Being, cannot be satisfactorily explained by the principles of our law, but the fact that the apostle was employing the conceptions of Roman jurisprudence to formulate his theology, removes our difficulty. "Heirs" and "inheritance" in St. Paul's days implied the very reverse of the conceptions involved in the modern use of these terms. A person did not then await the decease of the man whose son he was; in the moment he was born, or constituted a son by adoption, he then became an heir.

Birth, not death, is the incident which initiates the happy condition of an "heir of God."

It has been suggested that this fact explains the bold expression "heirs of God", and it is only our familiarity with the words that disguises the remarkable nature of a phrase implying succession to the Eternal Father. The phrase is a most vivid presentation of the eternal union between the believer and his God. Of course, the heirship to which he refers is Roman, not Hebrew, heirship. This is certain, not merely from the accompanying reference to adoption, but also from the fact that it is a joint and equal heirship. In the Hebrew law, as Dr. Ball points out,<sup>(1)</sup> the right of primogeniture existed in a modified form. In Roman law all "unemancipated" children succeeded equally to the property of a deceased father upon his intestacy. It is not necessary to wait for the father's death. The adopted son is already a participator. Besides, the personality of the father does not die. He always lives in his heirs. He is in law the same "person" with them. As heir he possesses three special privileges, namely, liberty, certainty, sufficiency.

Again: "Co-heirs with Christ"; "if so be that we suffer with Him, that we may also be glorified together." That is, "we must bear the charges with Him, if we would also share in the emoluments." Co-heirs, by testamentary law, accepted all the liabilities involved in the inheritance. Moreover, in Roman law, all "unemancipated" children were equally successors should the father die intestate. As we have already stated, there was no primogeniture. So with St. Paul the heirship is joint and equal. The idea of succession is obviously out of place in the similitude before us, and we have before shown that the heir was reckoned such, or rather was accounted part possessor,

1. Dr. W.E. Ball. "St. Paul and the Roman Law."  
page 14.

even in the father's life-time. Thus the application of Roman law to the position and privileges of the Christian is full of force and instructive power.

(C) THE INHERITANCE.

Those to whom St. Paul wrote, being fully conversant with the legal aspects of heirship, apprehended the lofty conception set forth in these figures and the spiritual prerogatives portrayed. They thereby realised the illimitable inheritance - though for a time its enjoyment was deferred - as already a possession of the believer. They were not mere expectants, but possessors in reality of the eternal inheritance; already, here and now, they were partners with God in the Divine Patrimony. It is noteworthy that St. Paul asserts this privilege of spiritual inheritance, in close connection with his statement of the incarnation and its purpose, "that we might receive the adoption of sons." (Gal. iv. 4.5.) The Son of God became the Son of man in order that man might become the sons of God - a spiritual status involving inheritance, for if children, "then heirs; heirs of God, and joint heirs together with Christ."  
(Romans viii. 17.)

But how are we to reconcile all this with the low estate of the present? Such exalted honour and privilege might be incompatible with the trials, the temptations, the sufferings of the present time. The Holy Ghost, in His office as witness, enables the heir of God to look upon these sufferings as disciplinary and not penal, sent to deepen, to develop, to purify, to beautify, his faith, and thus make him meet for the inheritance.

Universal suffering does not belie the sublime destiny, for it is only a stage of transitory experience, which must precede attainment of the heritage of glory. "If so be that we suffer with Him, that we may also be glorified with Him." (Romans viii, 17.) This does not refer to sorrow in general, which comes to all, whether children of God or not.

The "suffering" here intended is that arising from our union with Christ; such suffering "must be involved in our being one of His members". Roman Law did not contemplate- any more than our present law - an inheritance as involving only rights and privileges. The heir was responsible for any liabilities affecting the inheritance, as well as for the performance of any duties which the adopter might choose to place upon him.

Thus co-heirs, according to Roman Law, were invested with a liability to the claims upon the inheritance to which they succeeded. It would be manifestly unjust to permit one co-heir to accept all the benefits and at the same time to refuse the liabilities, thus casting all the burden on the other co-heir. So we cannot expect to share the glory with Christ and reject the suffering entailed, for "Faithful is the saying: if we endure, we shall also reign with Him." (2 Timothy, ii. 11.12.) It is only by our sharing in the inheritance of suffering and service, of whatever kind it may be, that we can finally hope to be sharers in the heritage of glory. But the certainty and value of the inheritance encouraged the Roman heir to sustain the burden of such liabilities as might be involved in the inheritance. So too the believer can say; "I reckon that the sufferings of this present time are not worthy to be compared with the glory which shall be revealed to us-ward."  
(Romans viii. 18.)

The right and title to the eternal inheritance is indefensible, so that the "co-heir with Christ" can declare: "To disinherit me is to disinherit my Co-heir Christ; for His title and mine are joined together in an indissoluble bond of co-heirship; and according to the title, we are children of God, ~~and~~ if children then heirs; heirs of God, and joint-heirs with Christ". The well-known maxim of Roman law comes here to the mind with force, "Semel heres, semper heres."

In close connection with the benefits accruing from sonship by adoption, St. Paul refers to what some have conceived to be either a different type of adoption, or a contrasted and

perfect spiritual state, in the words, "Not only so, but ourselves also, which have the first fruits of the spirit, even we ourselves groan within ourselves, waiting for our adoption, to wit, the redemption of our body." (Romans viii. 23.)

But neither of these explanations gives the true sense of the passage; for the apostle is not here contrasting an "inward" state already relatively perfect with an 'outward' state which has not yet participated in the spiritual renewal. The apostle means: "We, ourselves, who by possession of the Spirit have already entered inwardly into the new world, still groan because there is a part of our being, the outward man, which does not yet enjoy the privilege."<sup>(1)</sup>

Dr. W. E. Ball gives the following explanation:

"After describing the adoption of the believer into the family of God with reference to the formalities prescribed by law in cases of secular adoption, the apostle intimates (v. 19) that the sons of God, although adopted into the family, are not yet manifested. In verse 23 it is plainly this manifestation which is referred to. The word *υιοθεσία* used by St. Paul is the

Greek equivalent of the Latin 'adoptio'; but *υιοθεσία*

means literally 'the placing in the position of a son.'

This literal signification of the word allows of its use in a somewhat more elastic sense than 'adoptio'. It may refer to the ceremony by which a person is placed in the position of a son; or it may refer to some later act by which the adopted person is manifested as such, and 'placed in the position of a son' in the eyes of all. The words 'redemption of the body' (*ἀπολύτρωσις τοῦ σώματος ἡμῶν*) should, I think, be translated 'release from the body'. Verse 23, therefore, may be rendered: 'Even we groan within ourselves, waiting for

(1) Godet: Romans, Vol. 11. page 97.



that placing in the position of sons, which will be accomplished by our release from the flesh.'

"What is meant is not a new adoption, but a manifestation of the adoption already referred to. Released from the flesh, the adopted believer is taken home to his father's house, and his adoption is consummated by public acknowledgment and recognition."<sup>(1)</sup>

This is a very ingenious interpretation, but somewhat strained and far-fetched. Godet's exposition seems more in harmony with the context.

To sum up the apostle's argument: "There is no inheritance without sonship, no sonship without adoption, no adoption without Christ, and no Christ without faith." As Dr. W.E. Ball points out, further illustrations might be adduced of metaphors and lines of argument in the writings of St. Paul, which appear to be derived from the Roman Law.

"St. Paul is perhaps of all writers, either ancient or modern, the most difficult to understand. It cannot be that his obscurity is deliberate. It is due chiefly, no doubt, to our ignorance of the intellectual atmosphere of the age in which he lived. It is not suggested that a study of the Roman Law as it existed in the first century will afford an explanation of all the perplexing passages in which the Pauline epistles abound; but it is certain that no satisfactory commentary upon the epistles will ever be produced except by an author who, in addition to other qualifications, is a thorough master of the history of civil jurisprudence."<sup>(2)</sup>

One cannot but agree with Dr. Ball in this statement, as there is not a solitary reference to Roman Law in such a standard commentary as Sanday and Headlam in the International series.

1. Dr. W.E. Ball: "St. Paul and the Roman Law." pp. 9.10.
2. Dr. W.E. Ball: "St. Paul and the Roman Law." pp. 36, 37.

LEGAL TERMINOLOGY in 1. Corinthians.

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EVEN in this epistle, so much more Greek in its character, the familiarity is perceptible of writer and readers with the laws and institutions of Rome. Professor Otto Eger has a very pregnant note on 1. Cor. iii. 9f. He states that building operations were in the hands of a body of officials (e.g. *ναοποιοι* - temple builders) assisted by an architect (master builder). Work was given out to a contractor with instructions as to material to be used, etc. When the work was finished there was a testing of it (*δοκιμάσια*). If it is approved, the contractor gets his full pay (*μισθός*); if he uses the wrong material, or the work is badly done, he will be fined. In 1. Cor. Paul compares the Corinthian Community to a building of God, and then to a temple of God. He describes himself as the architect, while another builds upon his foundation. Here there is a test (by fire). If the building does not stand the fire, the contractor is fined (*ἡμιωθήσεταί* "shall suffer loss". E.V.)

In iv. 21. we find a reference to the Lictor's rod; in V.1. a reference to the laws of affinity; and in VI. 1-7 to the Praetor's court; application to which the apostle deprecates, suggesting instead the appointment of a "judex" of their own, who should be, as in the legal tribunal, a subordinate person, who at least might be able to arbitrate between brethren. In 1. Cor. VII. 8. ff. Dr. Otto Eger states that Paul speaks of divorce in legal language when he uses the word *χωρεῖσθαι*, which frequently occurs in the papyri as a technical expression for marital separation.

In 1. Cor. VII. 21, 22, 23, we have a reference to slavery. Indeed, Paul's epistles abound with these references. It was the desire of every slave to become free, and one way in which his desire could be obtained was by the slow and painful

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accumulation\$ of money to purchase his freedom. As to rights of property, the slave had none for his own benefit. Usage and his master's kindness or convenience generally insured him a peculium, but he had no legal right to obtain or keep it. Whatever a slave might have as peculium, whether the savings from exceptional industry, or gifts as a reward of extraordinary services, was protected by custom and public opinion, although not by law. This protection seems to have sufficed, for the cases were not rare in which the slave was able to buy his freedom out of the accumulations of his peculium. When the amount was sufficient it was paid by the slave into the treasury of the temple of a heathen god, as the price of his ransom. Then he and his master repaired together to the temple, and the priest, in the name of the god, paid the price over to the master. Thus the master was considered to have sold his slave to the god. He received full payment for him, and gave him his discharge. Now, the slave belonged no more to his master. The former owner had no right to call upon him for obedience, no right to inflict punishment. The slave henceforth belonged to the god. He had changed owners, and had gained freedom by the change.

Let us picture the scene as it probably happened to some of those who heard this letter of St. Paul's read. It is about Eastertide, and the Christian slave is treading the four mile ascent leading up the hill named Acrocorinthus which overlooks Corinth. As he mounts ever higher and higher he sees spread out below him the blue sea, and islands dotted here and there upon it; while on the horizon there comes into clear and ever clearer prominence the snow-white peak of Mount Parnassus. There is his heart, for he knows that there in the temple of Apollo, the Sun God, or Asclepius, the Healer, slaves are purchased for freedom, and he looks forward in hopefulness and yearning to the day when

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the sum will have accumulated to the amount sufficient for his emancipation, and instead of being in bondage to Gallio, or even Gaius (Rom. XVI. 23) down below in Corinth, he will go out a free man.

Let us imagine this Christian slave now descending from the mountain and going into the house of Titus Justus where the services of the Infant Church are held. A long letter has been received from Paul, the missionary who evangelised them, and is read at the evening service. It deals with various problems, and among them, the question of slavery and freedom. He hears words which tell him that spiritual freedom comes in the same way as bodily freedom and along parallel lines. That even he, who is a bond-servant in Corinth, may become spiritually free in proportion as he grasps the fact that Jesus Christ has bought him and that He is his actual Master. "Ye are not your own, ye are bought with a price, therefore glorify God in your body and in your spirit."<sup>(1)</sup>

Let us examine some of the main principles, contrasts and parallels between this slave in Corinth who has been emancipated and the slave of sin who longs for freedom, and is emancipated from its thralldom by Christ. In the first place his freedom is gained not by payments of his own, but by the purchase-money of Christ. This is a great contrast, for in reality the slave bought his freedom by his own hard earnings.<sup>(2)</sup> It was only a pious fiction that the god bought him; he had really bought himself, but Christ's purchase of the slaves of sin is a glorious fact. "Ye were bought at a price"<sup>(3)</sup> using the ordinary phrase found in the papyri.

Again, the freedom of the slave was not considered complete without sacrifice.<sup>(4)</sup> Within or in front of the temple stood the altar. There the master and the slave and the priest stood

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1. 1. Cor. VI. 19.20.

2. Deissmann's LIGHT FROM THE ANCIENT EAST. pp. 328, 333.

3. 1. Cor. VII. 23. 4. Deissmann's LIGHT FROM THE ANCIENT EAST. p. 334.

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while the sacrifice was offered, in token that the transference of ownership was real and effective. This is true as to our spiritual emancipation. "Christ our Passover is sacrificed for us." (1 Cor. 5. 7)

We find a third instructive point also. The slave's freedom was usually attested by witnesses and was then frequently inscribed upon stone.<sup>(1)</sup> So in the New Testament we find frequent allusions to the attestations of the believer's freedom from the spirit of bondage and timidity. "The Spirit Himself beareth witness with our spirit that we are the children of God."<sup>(2)</sup> And it is a testimony written down like the old imperial inscriptions. "Rejoice", says Christ, "that your names stand inscribed in the heavens."<sup>(3)</sup>

There are three ways in which we may think of the slave; as a debtor, because of the liability which he is unable to meet; or as a prisoner, because of the poverty by reason of which he is unable to extricate himself from his entanglement; or we may think of him as a profitable possession, because of the labour which he is able to render in exchange for the debt which he still owes. So does Paul look upon the Corinthian slaves, who have been emancipated from the thralldom of sin by Jesus Christ. "Ye are not your own, ye are bought with a price, therefore glorify God in your body, and in your spirit."<sup>(4)</sup>

Dr. Deissmann says: "The first result of purchase by the god is emancipation from old obligations. Against all the world, and especially against his former master, he is a free man."<sup>(5)</sup> So the believer now reckons himself dead to sin - his old master. "And now being made free from sin, and become slaves of God."<sup>(6)</sup>

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1. Deissmann's LIGHT FROM THE ANCIENT EAST. pp. 326, 327.
  2. Romans viii. 16.
  3. Luke X. 20.
  4. Corinthians I. vi. 19. 20.
  5. Deissmann: LIGHT FROM THE ANCIENT EAST. p. 326.
  6. Romans vi. 22.

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Our emancipation is total and complete. Now in many cases it was so with the Roman slave, but not always. Bishop Harrington Lees of Melbourne, possesses a copy of a papyrus which deals with an auction of a slave, held because of a technical difficulty which had arisen. Four men held shares in a slave, and one of the four gave the man his freedom. The other three were apparently unwilling to give it, and accordingly put their share in him up to auction. What the final solution was we are not told. But here was a man pulled two ways - the object of two claims, one of freedom and the other of slavery. Again, this freedom of the believer, so complete and so full, is also perpetual. This is frequently insisted upon in the papyri. Legal penalties are mentioned and the strongest injunctions given that after the transference the slave no more returns into the possession of his master. "The enfranchised shall never be made a slave again." The slave is now the protégé of the god.<sup>(1)</sup> So St. Paul in this epistle writes: "Ye were bought at a price, become not men's slaves."<sup>(2)</sup> In Dr. Deissmann's phrase, "the Christian is protected by God, he is God's protégé."<sup>(3)</sup>

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- (1). Deissmann's LIGHT FROM THE ANCIENT EAST. pp. 326, 329.
- (2). 1 Corinthians. vii. 23.
- (3). Bishop Harrington C. Lees: CHRIST AND HIS SLAVES. pp. 38-48.

2 nd C O R I N T H I A N S

a n d

E P H E S I A N S.

SEALING A CONTRACT AND EARNEST MONEY.

2 Cor. 1. 21.22. ὁ βεβαλῶν ἡμᾶς . . . ὁ καὶ  
σφραγισάμενος ἡμᾶς καὶ δούς τὸν ἄρραβῶνα  
τοῦ πνεύματος

cf. Ephesians, 1.14.

ἄρραβῶν (Gk.) arrha (Lat.) - earnest money to ratify  
a bargain, especially in reference to sales.

βεβαίως (confirming a bargain) important in the law  
of purchase.

If a man who gives an arrha does not keep his word, he  
loses it; if the one who accepts it does not, he has to refund  
double.

σφραγίσεν used in Roman Law to mark the authenticity of  
a document, a token of ownership.

παρρησία (very common in N.T. and often used by Paul) a  
word well-known to jurists. The word means literally "freedom  
of speech", but in N.T. (e.g. John VII. 4. Colossians II.15)  
it is rendered "openly."

In a papyrus, a decree of a praefectus of 206 A.D.,  
which was publicly posted up, is referred to. In it the prefect  
says all who have complaints to make about any kind of harsh  
treatment should be allowed to do so μετὰ παρρησίας  
- ~~equally~~ <sup>boldly</sup> - without any shyness or timidity.

Cf. Ephesians iii. 12. "In whom we have boldness (παρρησίαν)  
and access (προσβαγωγὴν)", the latter being a technical term  
for coming or bringing before the court.

ROMAN JURISTIC TERMINOLOGY  
IN  
GALATIANS.

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IN the Epistle to the Galatians ~~also~~ we come across certain words and passages which have a specific technical significance in legal procedure. It is wise for us to bear in mind continually that 'Rome spread her passion for the study of law wherever she imposed her yoke. The inhabitants of distant provinces came to rival the Italians themselves as masters of their national science. At a period not long after the death of Paul, Gaius, who like him, was a native of Asia Minor, became the greatest jurist of the age.'<sup>(1)</sup> It is therefore quite probable that St. Paul used legal metaphors knowing full well that their meaning would be understood. Having admitted this, the difficulty that presents itself is to decide whether the author is referring to Hebrew, Greek, or Roman law.

This has been a matter of acute controversy between the most learned scholars, such as Lightfoot, Schmiedel, Ramsay, Halmel. Some of the writers have no doubt studied the legal question in order to support their one particular theory as to the geographical position of the Galatian Churches. We believe they would have done greater justice to the legal question if they had studied it without the intention of making use of it to endorse their own particular theory of North or South Galatia.

There are only a few passages in this epistle that are supposed to contain legal phraseology, viz. iii. 15-20, iii. 29; iv. 1.2. iv. 5; iv. 7. Beginning with iii. 15-20, are we to regard the passage as a reference to contemporary legal usage, or is it a reference purely to the religious ideas and terminology

1. Dr. W.L.Ball. 'St. Paul and the Roman Law'. pp. 2.3.



of the Old Testament? In the passages, too, where there is no doubt as to ~~the~~ legal signification, does the author refer to Roman or Greek law, or is he merely using the legal terms in a popular and general way? In iii. 15. the author uses the word *διαθήκη*, and our first task is to show that it signifies a will and not a covenant, and having established that fact, to prove that it signifies a Roman and not a Greek will. It must be admitted that we cannot from <sup>s</sup>patriotic literature come to a definite conclusion, Jerome in the Vulgate translates the word 'testamentum'. While he favours 'covenant' as the exact rendering of the word, he freely admits that other commentators translated the word *διαθήκη* by 'will'.

Agreeing with this latter class are also Chrysostom and Ambrosiaster. Coming down to modern times, critical commentators reveal a great diversity of opinion. Lightfoot, Meyer, Rendall, Westcott and Moulton maintain that *διαθήκη* here means 'covenant.'

They have come to this conclusion from the general usage of *διαθήκη* in the Septuagint and the demands of the context in this particular passage.

St. Paul immediately after this refers to the Abrahamic covenant, and the giving of the Decalogue to Israel. Against this view, and favouring the idea of 'will', we find Ramsay, Schmiedel, Meyer-Sieffert, Deissmann. In fairness to Ramsay, it should be stated that he does not deny that the general biblical meaning of *διαθήκη* is 'covenant', but he maintains that in this particular passage it is quite clear that it should be translated 'will.' (Later on we shall see that he means Greek, and not Roman will.)

Deissmann in his 'Light from the Ancient East', page 337, is emphatic that *διαθήκη* always signifies 'will', and his words are worth quoting: "There is ample material to back me in the statement that no one in the Mediterranean world in the first

century A.D. would have thought of finding in the word διαθήκη the idea of "covenant". St. Paul would not, and in fact, did not. To St. Paul the word meant what it meant in his Greek Old Testament (Jeremiah xxxi & xxxviii) "a unilateral enactment", in particular, a "will or testament." This one point concerns more than whether we are to write "New Testament" or "New Covenant" on the title page of the sacred volume; it becomes ultimately the great question of all religious history; a religion of grace, or a religion of works? It involves the alternative, was Pauline Christianity Augustinian or Pelagian?<sup>(1)</sup>

The present writer is persuaded that διαθήκη here means 'will' and for the following reasons: (1) The phrase κατὰ ἄνθρωπον λέγω distinctly favours this view. Deissmann and Ramsay agree that Paul uses the word as in vogue in the every day life of an Eastern city, in the market-place, office or street, and not according to the special usage of the Septuagint. (2) The fact that the author, in V. 18, refers to inheritance; lends an additional force to this interpretation, While the conception of inheritance was quite a familiar one to the Jewish mind, and was used to signify and to symbolise some of the blessings accruing to the Children of Israel as a result of God's covenant with Abraham, still bearing in mind the phrase κατὰ ἄνθρωπον λέγω we feel that the more natural and reasonable interpretation of διαθήκη here is 'will' and not 'covenant'.

The phrase "I speak after the manner of men" is very significant. "It only occurs in three epistles, Romans iii.5. 1 Cor. ix. 8, and Galatians iii. 15. In all the three passages the phrase means to express one's thoughts - even about the ways of God - in a form taken from human affairs, to illustrate it by a reference to mundane practices or ways of thought. To this extent, the phrase does not help us to a solution of the present difficulty."<sup>(2)</sup>

1. "Light from the Ancient East", pp. 337-338.
2. Dr. Dawson Walker: "The Gift of Tongues" p. 98.

Dr. Dawson Walker, is convinced that something more decisive may be gathered from the passage in 1. Cor. ix. 8. The phrase *κατὰ ἄνθρωπον λαλῶ* does not merely indicate a human mode of expressing a Divine truth, but rather an illustration from human life around, as opposed to one taken from Scripture. The *κατὰ ἄνθρωπον* is opposed to the *ἐν τῷ νομῷ γεγραπταί* .....

. If this view of the expression in 1. Cor. viii. 9. be well-founded it may serve to throw light on our present passage. It may indicate that by the phrase *κατὰ ἄνθρωπον λέγω* St. Paul wishes it to be understood that he is taking his illustration not from Scripture but from the affairs of daily life, amid which the Galatian converts lived, that he is therefore not using *διαθήκη* in its Jewish, but in its Gentile sense, that he does not mean a 'covenant' but a 'will'.

We have next to decide whether *ὀνείδος* is the same subject as the *ἄνθρωπον* i.e., whether the statement is that a man cannot nullify or add further clauses to his own will, or that when a man has made a will no other person can invalidate it or make alterations in it. In coming to a decision on this point, we have to consider whether the author is referring to a Roman or to a Greek will. Dr. Anton von Halmel maintains that the reference is absolutely to a Roman will and Law throughout these passages, while Professor Ramsay, on the other hand, contends that only the characteristics of a Greek will will supply a satisfactory interpretation of the passages. We will first consider Halmel's view, which has at least the merit of consistency, though we do not agree with all his conclusions.

From Chapter iii. 15. to iv. 7. Halmel considers that the whole passage is capable of being interpreted only on the principles of Roman Civil Law, for he believes that Paul was acquainted with the profoundest technicalities of that system. He considers that the following Roman juristic terms occur in this passage:

iii. 15 )	
iii. 17 )	rumpere, irritum facere.
iii. 15, 17	testamentum.
iii. 15	in super-mandare.
iii. 16	dicere promittere.
iii. 18	hereditas.
iii. 29. iv. 1.	heres
iii. 19.20.	mediator, persona interposita.
iv. 1.	pupillus, infans.
iv. 2.	tutores.
iv. 2.	curatores.
iv. 2.	tempus praestitutum.

Halmel's interpretation in logical form of the apostle's argument is as follows:-

Major Premise - When a man has made a will, no one (except the testator himself) either annuls or makes additions to it. ( V.15)

Minor Premise - The bestowing of the Promise on Abraham by God is expressed in the form of a legally valid will. (V. 16)

Conclusion - No one annuls or makes additions to the Promise (except God, the original donor). As a matter of fact, He does not annul it by giving of the Law (οὐκ ἀνυρῶ ) but ~~He~~ makes a further addition to it (προσέτιθη § 4vv.17.19) 'The inheritance' (κληρονομία) is connected with the Promise, that first διαθήκη προκεκυρωμένη of God, and not with the Law. The Law has no relation to an inheritance; it is therefore not a διαθήκη, and it does not therefore annul the first διαθήκη of God, but is only a later clause added to it. Inasmuch as it does not alter the disposition of the κληρονομία made in that first διαθήκη, it is only an addition of a formal, and not of a material, kind. Such an addition is a codicil. And this conception leads to the same result as that reached by the former line of argument, for it

is clearly laid down in Roman Law that a codicil cannot affect inheritance. We find in Gaius "Codicillis heres non instituitur" and Justinian says "Codicillis hereditas neque dari neque adimi potest" <sup>2</sup>. Thus the legal inferiority of a codicil as compared with a will illustrates the inferiority and transitoriness of the Law as compared with the promise.

The reason for the addition of this codicil - the law - is given in the words τῶν παραβάσεων χάριν προσετέθη. This phrase is only a fragment of a theological kind in an argument that is otherwise constructed on the lines of Roman Law. The Law then in its character as a codicil, had but a subordinate significance. It had reference to a transient condition of things.

Until the seed should come the inheritance was but a 'hereditas jaccus'. When the heir comes into the inheritance then the validity of the Law ceases. Thus the words serve to bring out the transitory validity of the law as opposed to the permanent and unalterable validity of the promise. This aspect of the Law is still further emphasised by the words:

διαταγείς δι' ἀγγέλων ἐν χειρὶ μεσίτου.

διαταγείς points back to ἐπιδικάσεται in V. 15. The promise was bestowed directly on Abraham; the law was given through angels. The μεσίτης referred to is Moses. But in what sense does St. Paul apply this term to Moses, and how does the application bear on his conception of the Law? The generally accepted view is that Moses was the mediator between God and the people. The mediator is conceived as a person standing between two contracting parties. This view, however, rests on a fundamental error. It rests on the idea that we are dealing with the relationship of two contracting parties, but throughout the whole of this section of the epistle there is

<sup>1</sup> Gaius II 273

<sup>2</sup> Justinian Institutes. Lib. 11. Title XXV. Sec. 2.

no hint either of a contract<sup>r</sup> or of any legal transaction comparable to a contract. The leading idea of the whole passage is that of a testamentary disposition, a will, and the inheritance bestowed by that will. In other words it is an entirely 'one-sided' transaction that is referred to, containing no idea of a contract.

St. Paul regarded the Law as inferior to the Promise. The reason for the inferiority was not that the Law was mediated, and the Promise was not, but that the Promise was permanent and unalterable, whereas the Law was only intended to apply to an interim. If Moses then was not the mediator between God and the people, in what sense was he a mediator? He was the mediator in that he came in between the bestowing<sup>r</sup> of the promise on Abraham and the fulfilling of it in Christ. In other words 'mediator' is to be interpreted in a temporal sense. Moses was the mediator not between the contracting parties, but between two time limits - between the bestowing of the Promise and its fulfillment.<sup>1</sup>

We may sum up Halmel's conclusions as follows:-

"The apostle's thought is moving in the sphere of Roman Civil Law. The dominating conception is that of a will, the conditions of its validity, the relation to it of a subsequently added codicil. In the second passage the conception is that of an heir, still a minor under guardians, the term of whose office is determined by the father's will. St. Paul holds that the Promise bestowed on Abraham has the unalterable validity of a rightly executed will. It is referred to in correctly expressed terms: it is devised to a "persona certa", Christ. The subsequently bestowed Law had merely the secondary character of a codicil. That it was not a second will was apparent from the fact that it had no concern with an inheritance; it simply was a temporary additional arrangement, with the ultimate aim

1. Dr. Dawson Walker: 'The Gift of Tongues', pp. 111-115.

of carrying out the intention of the original will. Moses the mediator was so called as the representative of the Law in this intermediate period between promise and fulfilment. The condition of those who in this intermediate period were under the Law is comparable to that of a ward in his minority till the time of his majority arrives.<sup>1</sup>

Halmel's theory is exceedingly ingenious and consistent. All the various details are suitably related to the fundamental conception of the Roman will. The Promise is the will; Abraham is a 'persona certa' and therefore qualified to be the heir; the Law is the codicil, having only a supplementary and secondary significance. We believe that Halmel is right in interpreting the 'will' as Roman, and not Greek. We think that he has proved this point, although Dr. Walker does not think so. But his interpretation of *σπίρμα* in V. 16 and of *μεσίτης* in VV 19.20 does not seem convincing, but highly artificial and far-fetched. We agree with Dr. Dawson Walker that these suit Jewish thought and exegesis rather than Roman Law.

† † †

We have now to consider Professor Ramsay's view which stands in absolute contradiction to Dr. Halmel's theory, both in its contents and its consequences. Ramsay maintains that the legal terminology in the epistle is Greek and not Roman.

We will begin our criticism of Ramsay's theory with the apostle's argument in Gal. III. 7. 'Know ye, therefore, that they which are of faith, the same are the children of Abraham.'

Ramsay (Historical Commentary page 338) paraphrases the words thus: "All they who inherit that special property of Abraham, viz. Faith, must be sons of Abraham, i.e. that none but a son can inherit, and that the terms "Son" and "Heir" are interchangeable." "Obviously", says Ramsay, 'that principle suits Greek law much better than Roman law as it was in the centuries immediately before or after Christ.'

1. Dr. Dawson Walker: THE GIFT OF TONGUES. pages 119-120.

"The underlying assumption here is, that only a son can inherit , hence the terms "son" and "heir" are interchangeable. The right, then, of the Gentiles to be called "sons" of Abraham is based on the fact that they are "heirs" of Abraham, i.e. of his faith. This equivalence of heirship and sonship was a feature in the ancient law of "Adoption" as held by both Greeks and Romans. In the case of Greek law the principle still remained unaltered; in the case of Roman law it had, by the time of St. Paul, undergone considerable changes. It had become quite possible for a man to make anyone his heir without adopting him as a son at all, and conversely, a man might be adopted without any intention of making him an heir. Now in Greek law, as we have said, this equivalence of heirship and sonship still held good. And St. Paul's words in 111. 7. express this principle of Greek law. Hence St. Paul must be writing for readers who were conversant with Greek rather than with Roman Law. As Greek Law would not be introduced after the Roman occupation of the country, the inference is that St. Paul must be writing to people whose ancestors had been familiarised with Greek Law before the Roman occupation of the country took place.<sup>2</sup>

This is a summary of Ramsay's conclusions in connection with the question of heirship and sonship. We must enquire whether the premisses from which the conclusion is drawn are valid and safe. We must here, at the outset, acknowledge our indebtedness in this enquiry to Schmiedel's article on Galatia in the Encyclopaedia Biblica Vol. ii. which has subjected Ramsay's views to a most searching criticism.

Let us consider first of all his statement that the equivalence of heirship and sonship persisted in Greek Law. Dr Dawson Walker has shown that this view is hardly borne out by the facts of the case. "The evidence seems to show that in Athens, as early as the time of Isaeus (c.370 B.C.) a man was at liberty to make anyone his heir without adopting him. Mitteis accepts

2. Dr. Dawson Walker: THE GIFT OF TONGUES. pages 127, 128.



this as holding good in the third century B.C. not in Athens only but in Greece generally. He says, "The Greek will, just like the oldest Roman will, was essentially based on the idea of adoption, and it is very probable that the most ancient form of appointing an 'extraneus heres' was by a real 'adoptio inter vivos.'<sup>(1)</sup> This latter supposition rests on the evidence supplied by the various wills preserved by Diogenes Laertius in his Lives of the Philosophers. It would seem from these that the circuitous method of adoption was no longer the absolute rule, and the internal probabilities of the case are that it would tend to be omitted. And the philosophers, whose wills are thus quoted, are not confined to Attica. There is no necessity here to examine all the evidence afforded by Diogenes Laertius. If we simply take Book V. as a specimen we have there, in addition to the will of Theophrastus (who may count for this purpose as an Athenian, though he was born in Lesbos), those of Strato, of Lampsacus, and of Lyco who belonged to the Troad. In the wills of all three the property is bequeathed to a variety of different people without any mention of adoption.

"Ramsay himself admits that a Greek will of the year 189 A.D. discovered in Egypt, is expressed entirely in the Roman style and after Roman custom. He attributes this to a "rapid development" that took place in Egypt. "The soldiers who settled there were separated from their family, and were sole masters of their fortune, and therefore the family influence on the Diatheke, and family rights over the property of the individual, which were so powerful from long-standing feeling in the surroundings of their old home, had little force in Egypt. Everything concurred to give the individual owner absolute right to dispose of his property as he pleased."<sup>(2)</sup> This looks dangerously like special pleading. It seems a much more probable supposition that this particular Greek will was so drawn up because Greek

1. Mitteis: REICHSCRECHT UND VOLKSCRECHT. p. 341.

2. Ramsay's HISTORICAL COMMENTARY ON GALATIANS. p. 366.

wills in general had developed into this particular form.

" The evidence on this point that may be gathered from the Syro-Roman Law Book seems also to go contrary to Ramsay's view. It is clear from paragraphs 36. 63 of the London text that the testator can there name as heirs his wife and his children, whether they be legitimate or illegitimate." (1) (Brun~~s~~ and Sachau. pp. 12 & 19.)

This summary of Schmiedel's criticism of Ramsay's theory by Dr. Dawson Walker seems to the present writer both just and accurate, and proves that Paul refers in this passage to Roman and not Greek Law.

We now come to the second part of the argument which deals with the question of the *διαθήκη*. Ramsay maintains that the *διαθήκη* in lll. 15 is referred to in such terms as to make it certain that Paul is emphasising those characteristics in which a Greek will (as Ramsay holds) differed from a Roman. To discuss this matter in detail it would be necessary to make it the subject of a thesis; we can here only treat it in a more or less general and cursory way.

We agree with Ramsay that the reference cannot be to the original Roman will, for no doubt as Maine shows in his Ancient Law, Chapter VI. that kind of will had become obsolete in Roman law, and could have been familiar to no one except a legal antiquary. But we will try to prove that the reference is to the Praetorian will - a simple and highly developed form of will, and which had come into general usage. It was in character secret and revocable. According to Ramsay, the reference here is to the Greek will, which had an entirely different character in that it was public, irrevocable and unalterable; it comes into operation as soon as the conditions are performed by the heir. Dr. W.E. Ball believes that the apostle here is thinking of Roman Law. We will quote his words; "It need hardly be said that St. Paul, in any metaphor based upon will-

making could only refer to the Roman will. The Romans were the inventors of the will<sup>(1)</sup> Ramsay charges Dr. Ball with speaking on the assumption that there was no Greek system of will-making. The present writer cannot believe that Dr. Ball was ignorant of the existence of Greek wills, but so convinced was he of the apostle's references to the Roman that he did not consider it necessary to discuss the other possibility.

Ramsay quotes the expression in V. 15. 'when it hath been confirmed', as an argument in favour of his contention that the reference is to the Greek will. "Every will had to be passed through the record office of the city. It was not regarded in the Greek law as a purely private document, which might be kept anywhere and produced when the testator died. It must be deposited either in the original, or in a properly certified copy, in the Record Office, and the officials there were bound to satisfy themselves that it was a properly valid document before they accepted it. If there was an earlier will the latter must not be accepted, unless it was found not to interfere with the preceding one. That is a Greek, not a Roman custom.

"There was no such provision needed in Roman law, for the developed Roman will might be revoked and changed as often as the testator chose; the latest will cancelled all others."<sup>(2)</sup>

Ramsay's contention then, is, that the Greek will was irrevocable and public, while the Roman was revocable and secret. But we doubt if his conclusions are beyond dispute with regard to the Greek will. Dr. Dawson Walker, who accepts Schmiedel's criticism of Ramsay's views, writes as follows:

"Let us examine, in the first place, the question of the publicity of the Greek will. So far as the law goes, the evidence is clear. Written wills were usually sealed up and were only opened after the death of the testator. There was

(1.) Dr. W.E.Ball. CONTEMPORARY REVIEW (August 1891.p.,278.)  
(2) Ramsay's HISTORICAL COMMENTARY. pp. 354.355.

apparently no necessity to deposit them with a magistrate. They were allowed to be entrusted to private persons for safe keeping, or even, for greater security, to several private persons. For proof of this, we may refer to what has been preserved by Diogenes Laertius. For example, copies of the will of Theophrastus were deposited with three separate friends. The copies were sealed with the testator's seal.<sup>1</sup>

Dr. Walker also quotes the case of Arcesilaos, who was born at Pitana in AEolis. "It is clear, then, that according to *Attic* law a will was deposited with private individuals, and that its contents remained a secret until the seal placed on the will by the testator was broken. We infer also from a passage in Isaeus<sup>(2)</sup> that a will so deposited could be demanded back to be destroyed or declared no longer valid, in the presence of witnesses. It would seem, then, that there is very little ground for the supposition that there was any such thing as an official scrutiny of the contents of a will."<sup>(3)</sup>

These instances contradict Ramsay's statement as to the publicity of the Greek will. Let us now consider his second statement as to the irrevocability of the Greek will. We cannot do better than quote Dr. Walker's own words:

"As to the irrevocability of the Greek will, we can only remark that it appears to be quite unknown to those scholars who have made a special study of the subject. Schulin<sup>(4)</sup>, who includes in the scope of his investigations not only the wills, but all other Greek wills accessible to him, makes no mention of it. In fact, while it is admitted that an adoption made during the lifetime of the adoptive father was irrevocable, it is still affirmed that a will containing an adoption could at any time be recalled. This fundamental principle seems

1. Diog. Laert. de Clar. Phil. Vit. Lib. V. C.2 para 57.

2. De Phil. Hered., paragraph 6.

3. Dr. Dawson Walker, THE GIFT OF TONGUES. p. 141.

4. Quoted by Schmiedel, art. Galatia. Encycl. Bibl. Vol.2. Col. 1609.

to have remained operative in Syria at any rate till the fifth century A.D., for in the Syro-Roman Law Book the principle (which accords with the Roman one) is upheld; that an earlier will is cancelled by a later one. The words are: 'If a man makes a will, and he who makes it makes known in brief the determination that he has formed to make another will, then is the first that he made no longer valid.'<sup>2</sup>

"The only evidence which Ramsay produces on this point of irrevocability is taken from the Greek wills found in the Faiyum, and this evidence is of the most slender and hypothetical character. 'In the wills in Egypt', he says, 'there is often contained the provision that the testator is free to alter or invalidate. Such a provision need not have been made, if wills were acknowledged to be revocable at the testator's pleasure; he has to guard by a special provision against the customary presumption that the Diatheke is irrevocable.'<sup>2</sup>

"As Schmiedel here acutely points out, a 'customary presumption' has no legally binding force. If it had it would not be possible for wills to be revoked. Ramsay also makes a candid admission, which seems to militate against his own ~~theory~~ theory. He says: 'I confess that several high English authorities on Greek wills in Egypt when consulted privately, expressed the opinion that these wills were revocable at the testator's desire.' He adds, however, 'but they have not satisfied me that the evidence justifies that opinion earlier than the Roman time and Roman influence.'<sup>3</sup>

"What is needed here then to establish Ramsay's view is a clear case in which Greek law was different from Roman in this matter of revocability. As yet no such case has come to light. No instance has been produced from any part of the

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<sup>2</sup>. Bruns und Sachau. p. 15.

<sup>2</sup>. Historical Commentary. pp. 366, 367.

<sup>3</sup>. Op. cit. p. 366.

area in which the influence of Greek law was operative of the irrevocability which, as he says, "was a characteristic feature of Greek Law." In this case then, as in the former one, we conclude that Ramsay's contention is not backed by satisfactory proof. There is no convincing evidence that in this matter of secrecy and irrevocability the Greek will was (B.) very different from the Roman.

We therefore conclude that the will referred to in iii. 15. is not characterised by publicity or irrevocability, as Ramsay maintains, and in consequence his argument on behalf of the Greek will as against the Roman, fails to convince.

Let us now consider the terms ἐπιτρόποι and οἰκονόμοι referring to "guardians" and "stewards" or "tutors" and "Governors."

Roman Law provided for the guardianship of persons (males) under the age of fourteen, by authorising the head of the family to nominate guardians by his will for this purpose. They were termed tutors. But as this period of guardianship was frequently unequal to the general purposes of convenience, the introduction of "curators" to secure the due supervision of a ward till the age of twenty-five. The "curator" was not appointed by a will, but by the Praetor or Praeses - the governor of a Province - as the case might be. Thus in Roman Law there were two distinct forms of guardianship. In the pure Greek Law there was only one kind of guardian (ἐπιτρόπος). This is the first of the terms employed in iv. 2. and Ramsay asserts it is equivalent to the "tutor" of Roman Law. There is no mention in the pure form of Greek Law of the "steward" (οἰκονόμος). But Ramsay considers that St. Paul's reference here is not to pure Greek Law, but to a form of it, modified by contact with

Oriental notions. He considers that the peculiarities of this modified Greek Law are recorded in the Syro-Roman Law Book, edited by Bruno and Sachau, whereby a father may make a two-fold nomination (not only of "guardians" but also of "stewards") for his children who are minors, i.e. under the age of twenty-five years. Schmiedel considers<sup>(1)</sup> that his argument is not convincing.

Mitteis also in this connection makes<sup>(2)</sup> a most significant remark that tells heavily against Ramsay's view. He quotes the opinion of Bruns - the co-editor of the Syro-Roman Law Book - to the effect that "the formal difference made by the Romans between 'tutela' and 'cura' was not rightly understood by the Orientals.

Halmel, unhesitatingly maintains that the two-fold form of the ἐπιτρόπος and οἰκονόμος correspond to the two-fold form of "tutor" and "curator" in Roman Law.

Dr. Dawson Walker maintains that in the reference to ἐπιτρόπος and οἰκονόμος St. Paul has probably Roman Law in view, but he uses general Greek equivalents for the exact technical terms.<sup>(3)</sup>

Bishop Lightfoot, in his commentary on this epistle, says: "It has been questioned whether St. Paul borrows the imagery here from Roman or Jewish Law, or even, as some maintain, from a special code in force in Galatia. In the absence of very ample information, we may say that so far as he alludes to any definite form of the law of guardianship, he would naturally refer to the Roman; but as the terms are not technically exact, he seems to put forward rather the general conception of the office of a guardian, than any definite statute regulating it.

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1. Schmiedel: Encycl. Biblica. Vol. 2. Col. 1610.
  2. Quoted in Reichsrecht und Volksrecht. page 217.
  3. Dr. Dawson Walker, "GIFT OF TONGUES." page 169.

In 1V. 2. we find the words τῆς προθεσμίας τοῦ πατρὸς  
 It is just possible that St. Paul knew that, whereas the terms of guardianship were ordinarily terminated by statute, there were cases in which the term was fixed by the father in his will. The reference in these words is probably to Roman Law. He shows his readers how, under the "Patria Potestas" or the "Tutela" which supplied its place, they were not free to act for themselves. But now, the "Tutela" being removed or ended, their inheritance is open to them as being fully "sui juris". Even the "haeres", as they well know, so long as he is under age, differs nothing from a "servus" though, potentially, "sit domus omnium". So were they themselves "sub tutorious et curatorius", both their person and their property being under guardianship "until the time appointed of the father." There is no reason to suppose that discretion as to the time could not be exercised under the Roman Law, for Gaius says: "Si cui testamento tutor, sub condicione aut ex die certo datus sit", and Justinian seems to assume it as a principle in the Institutes 1. XLV.3. "Ad certum tempus vel ex certo tempore vel sub condicione vel ante heredis institutionem posse dari tutorem non dubitatur."

So it had been with these Christians, and in fact with all mankind. They had been in bondage under the στοιχειά the elements of the world. But now the "fulness of the time was come". The work the Son of God had come to do was one of redemption, of release from an actual condition of slavery, for "Christus nos redimit" from the bondage of the "lex" under which He found us. Once more the apostle in order to illustrate to the full the blessings of the Gospel dispensationslightly changes the ground, though still proceeding on the same underlying argument from Roman Civil Law. He now



regards mankind as really slaves, needing redemption in order to place them in the position of sons. This is a very important and significant point. "Misit Deus Filium Suum, ut nos redimeret." He is strikingly particular here, and singularly accurate. "Ut adoptionem filiorum reciperemus." The process of sale and purchase must first take place, the "redemptio" must be complete, before the "adoptio" could really place them in the true position of "filii". There was a doubt among the ancients, though Justinian accepted the opinion of Cato as decisive in the negative, as to whether an adopted slave, though made free by the adoption, acquired the rights of a son. But the apostle will not allow this doubt to invalidate the Christian's title. Redeemed from slavery first, and then adopted, they become not "filii" alone, but undoubted "heredes" also. For the effect of adoption in the case of one who was made free was to place the adopted exactly in the position of a son born. Thus the apostle triumphantly vindicates the liberty and the high privilege of the "filii" of the Heavenly Father, whose adoption is moreover sealed in this case by sending the "Spiritus Filii Sui in corda clamantem, Abba Pater."

"Quod si filius et haeres." iv. 7. There was no blot or slur on the standing of the new "filius-familias." Thus does Paul call in the aid of Roman Law, and profoundly reason on the deepest matters that touch mankind, in words wonderfully applicable and beautiful. These truths have travelled down the ages and may be as potent to the Western Christian of to-day, as they could be to the Galatian convert then; so at least they were in Luther's time, whose epistle to the Galatians bears witness to the wide and catholic interpretation of which St. Paul's great argument is capable. For a similar bondage once more enslaved the "liberti", the "filii"; and the same glorious "hereditas" had to be again proclaimed

to the soul of a bound and des<sup>la</sup>iring Church.

Dr. Lightfoot thinks that St. Paul's reference to heirship in the Epistle to the Galatians should be explained by assuming the apostle's knowledge of Roman Law. "It has been made a question whether St. Paul is here drawing his illustrations from Jewish or from Roman Law. In answer to this it is perhaps sufficient to say, that so far as he has in view any special form of law, he would naturally refer to the Roman, as most familiar to his readers." (2)

NOTE: After the writer had typed the preceding pages, he received from Dr. Otto Eger his pamphlet on Gal. 3. 15-19, in which he maintains that St. Paul refers to the Greek and not the Roman *δικαθύνει*. He bases his contention on the evidence of the papyri, but with the modesty and fairness characteristic of great scholars, suggests that his opinion has on its side a high degree of probability. Eger in his pamphlet acknowledges that M. Conrat, Sieffert, Halmel, favour the Roman Law interpretation.

The following is a brief abstract of Dr. Eger's view on this important passage. *"See next page"* ~~Paul compares the promise given to Abraham.~~

(2) Lightfoot. Epistle to the Galatians. p. 170.

διαθήκη \* Paul compares the promise given to Abraham with the διαθήκη of a man. There can be no doubt that by this human διαθήκη is meant a disposal of property at death. The only question is whether such disposal is <sup>(1)</sup> one drawn up in accordance with Galatian, Jewish, Roman, or Hellenistic law, or (2) a general expression in regard to a human "testament", without reference to any definite body or system of law.

Eger decides for (1) and comes to the conclusion that a Hellenistic διαθήκη is intended. The words in *verse 15* are common to Hellenistic legal language, and are closely related to terms used in Hellenistic διαθήκαι.

(κυροῦν ἀθετεῖν διατάσσειν )

The aim of Paul is to show that the divine διαθήκη (the promise) cannot be made invalid by the much later law "ordained by angels", that is, by a third person, and not directly by God, and the fact that a human διαθήκη cannot be assailed by a third party's action occurs in Hellenistic law, and any contravention of this can by such interference be punished by fine. It is expressly said that no one is to have power to upset such testamentary disposals. It is therefore highly probable that Paul, thinking of a Hellenistic διαθήκη secured by such a penal clause, adds as a general principle, (verse 15.) that a διαθήκη confirmed (declared valid and secured by a penal clause) cannot be invalidated or any addition made to the testamentary disposals by any one. The word ἐπεδιατάσσεσθαι occurs in Eusebius Hist. Ev. V. 16, 3. δοξω τιςίν...δυνατόν, where Eusebius no doubt had Gal. iii. 15. in mind. He also uses προβθεῖναι and ἀφελεῖν, often used in legal documents in altering clauses (cf. Letter of Aristeeas ad Phil. ed. Wendland. 311.)

Further evidence that a Hellenistic διαθήκη is meant, in Gal. iv. 1, 2, we read "But I say that so long as the heir is a child, he differeth nothing from a bondservant, though he is lord of all; but is under guardians and stewards until the term appointed of the father"

Such appointments of guardians and statements about the length of time of guardianship are frequent in Hellenistic διαθήκαι in papyri.

We now see Paul's further train of thought. By the designation of the promise of God to Abraham in the Septuagint as a διαθήκη he is led to the comparison with the human, precise Hellenistic διαθήκη.

It has been thought that in the διαθήκη it is a question of a so-called adoption -testament, a disposal at death, in which he who is intended to be the heir is inserted in the will as son, and by the medium of this artificial kinship receives the heritage as son. This seems supported by Gal. iv. 4, etc. where adoption (υιοθεσία) on the ground of which Christians receive the inheritance (κληρονομία) as sons of God, is mentioned. But Paul can hardly have thought of a testamentary adoption, nor would his readers have thought of it, for the adoption-testament belongs to an earlier stage of development of disposals at death.

In the Hellenistic papyrus διαθήκαι of the time of Paul there is no longer adoption, but only the bestowal of property.\* The papyri (although 4th century ones) do speak of υιοθεσία but it is not adoption in the διαθήκη, but only adoption agreement among living people (e.g. it is fixed by agreement that the person adopted is to be the heir of the adoptor, i.e. after his death.)

In Paul it is <sup>a</sup> question of two different metaphors, taken from legal life. (1) the inheritance (κληρονομία) of Christians on the ground of the promise (διαθήκη Gal. iii. 14. 29); and (2) their inheritance on the ground of adoption (υιοθεσία), which makes them sons of God and thereby heirs. Both metaphors were familiar to Paul, and while in the Galatians he puts them close together, he clearly distinguishes between them in Romans <sup>iv</sup> 13 ff. viii 14 ff.

\* Egger. p.31. Um das eben gesayte zu erhärten ..... nachweirm lässt.

EPHESUS was the capital of the Roman proconsular province of Asia, and was a free city. Its laws and constitution came in as a strong protecting power to the help of the apostle in his mission there. We should naturally expect some legal colouring in an epistle written to people always encircled by Roman influence.

In Ephesians (1.13.14.) the Holy Spirit is referred to as a witness. It is suggested by Ball that the passage should be translated "In whom having also believed, ye were sealed with the Holy Spirit of testimony, which is an earnest of our inheritance until the ransoming accomplished by the act of taking possession (of the inheritance) to the praise of His glory."

Here the third person in the Trinity is regarded as the witness whose seal authenticates the will by which our inheritance is obtained. "This spiritual inheritance, as in other passages, is referred to by St. Paul as succeeding upon a stage of bondage. When a slave was appointed heir, although expressly emancipated by the will which gave<sup>6</sup> him to the inheritance, his freedom commenced not upon the making of the will, nor even immediately upon the death of the testator, but from the moment when he took certain legal steps, which were described as "entering upon the inheritance." Thus is "the ransoming accomplished by the act of taking possession."

"In the last words of the passage, "to the praise of His glory", there is an allusion to a well-known Roman custom. The emancipated slaves who attended the funeral of their emancipator were to the praise of his glory."<sup>(1)</sup>

(1) Dr. W.E. Ball. pp. 27 & 28.

In Ephesians II. 12. 19. we think there is a reference to Roman Law and custom. In the early days of the Republic, admission to the rights of Roman citizenship was as strictly circumscribed as the privileges of Judaism, but extension of franchise proceeded apace under the Emperors, whose revenues were largely supplemented by the fees exacted for the franchise, till at length the citizenship was extended to all free subjects of the Empire.

There was growing up concurrently as the result of apostolic labour, the Christian conception of a church, not as a kingdom subjugating the world, but as a commonwealth gradually extending its citizenship to other lands and races. That conception is thus expressed by St. Paul: "Ye were at that time separate from Christ, alienated from the commonwealth of Israel..... ye are no longer strangers and aliens, but ye are fellow-citizens with the saints and of the household of God."

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ST. PAUL'S EPISTLEStoTIMOTHY.

No doubt the apostle in 1. Timothy, VI. 20, and in 2. Timothy, 1, 12, 14, refers to the Roman legal term of contract "depositum." "I am persuaded that He is able to guard my deposit against that day." (παρὰ θήκη)  
The Vulgate employs the word "depositum" as the translation of the Greek.

In the Roman law of Contracts, "depositum" was an important term, and signified the placing of a thing with another (depositarius) for safe custody, without remuneration, to be delivered on request. The depositary must return the thing on demand, and take such care of the thing deposited as if it were his own property (quanta in suis rebus). The depositor must pay all expenses incurred, and compensate for any loss occasioned by the thing deposited. Paul, in writing to Timothy, looks upon his life as a deposit placed in the custody of his Lord, and he is confident that it is safe in His keeping.

In 1. Timothy VI. 20. Paul commands Timothy "Bonum depositum custodi" (Guard thou the good deposit"). The idea is that our Lord has entrusted Timothy with the doctrine of the Church, hence he is the depositarius, so he must practise the "exacta diligentia" in guarding it. Gaius (11,60) refers to "fiducia", contracted either with a friend or with a creditor; with a friend for safe custody of a thing transferred to him during the absence of the transferrer ..... etc.

(Muirhead: "Introduction Historique" page 182. (See Mommsen: "History of Rome", Vol. 3. page 91.)

The doctrine of diligentia is a most important factor in the principles and teaching of Roman Law of "Depositum". There were different degrees of diligentia required in business transactions. "Exacta diligentia" was the diligentia a bonus paterfamilias was expected to manifest. Next in order, a less rigid

standard was required, i.e., a man was required to be only as careful as he was in affairs which concerned no one but himself (talem praestare diligentiam qualam in suis rebus adtribere solet).

No doubt, this doctrine of diligentia explains Luke XVI.12. "And if ye have not been faithful in that which is another man's who shall give you that which is your own?"

A contrast is drawn between the individual's want of faithfulness in that which is another's, and that diligentia which we might naturally expect to find in him when managing his own affairs.

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## THE EPISTLE OF PAUL

to

TITUS.

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ADOPTION

and

REGENERATION.  
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In Titus 111. 5,6,7, the apostle in a remarkable passage seems to mingle the metaphor of adoption with that of regeneration. "He saved us through the washing of regeneration and renewing of the Holy Ghost, which He poured out upon us richly", etc. The purpose was that "we might be made heirs according to the hope of eternal life". To the mind of the apostle both terms seem to suggest the same spiritual fact.

In his other epistles St. Paul exchanges the physical metaphor of regeneration for the legal metaphor of adoption. He is the only one of the sacred writers who makes use of the metaphor of adoption. Nor is it the word only that is peculiar to him, but the idea. This metaphor was his translation into the language of Gentile thought of Christ's great doctrine of the New Birth. But here in writing to Titus he seems to mingle both metaphors. There may be in this text some foundation for the modern expression of the doctrine of Baptismal Regeneration. The symbolic act of signing with the cross is accompanied by the words, "We receive this child into the congregation of Christ's flock." There is some slight resemblance here to the old legal "vindication" or claim, with the "festuca" in the adoptive ceremony.

We have in another part of this thesis dealt with the metaphor of adoption, which has so much coloured the theology of the Western Church, and it is important as well as interesting to note the history of the modern term "regeneration", since

in this passage ~~in~~ Titus the apostle seems to use both metaphors.

In Latin it is originally a botanical term, and means the transplanting of a tree, or the introduction of it into a new soil; or, the reproduction, under new conditions, of an old plant.

In the exactly corresponding Greek word *παλιγγενεσίας*, it is used for the restoration of a thing to its pristine state; e.g. the restoration of life after death; or the renewal of the Earth after the Deluge; the restoration of knowledge by recollection; the restoration of righteousness which the Jews expected with the Messiah; and, cognate to this, the renewal of all things at the end of the world. We notice that the only two passages where the word is used in the New Testament <sup>are</sup> ~~is~~ Matt. XIX. 28., and Titus III. 5.

In like manner, the same word is used of the admission of proselytes into the Jewish faith.

From this it may be inferred that the term "regeneration" did not originally imply a new nature, but a new condition. It answered, when applied to the Christian religion and Christian baptism, not to a change of heart or conversion, but to a change of relation or privilege, i.e., adoption. The use of it as a change of nature, in theology, is later, perhaps due to Augustine. (Civ. Dei XX.5.) about 420 A.D.

And this use of "regeneration" having become common in the modern Church, the doctrine of Baptismal regeneration is thought to mean Baptismal conversion, instead of baptismal adoption, i.e., the placing of a child in the family of God, under a covenant of promise, with blessings sealed and responsibilities implied. In the Church of England Order for the public baptism of infants, the priest says after the child is sprinkled, "Seeing now, dearly beloved brethren, that this child is regenerate", etc. The only signification we could attach here to "regenerate" is "adopted". Indeed, later on in the service, the idea of adoption is introduced after the term "regeneration".

The priest says: "We yield Thee hearty thanks, most merciful

Father, that it hath pleased Thee to regenerate this Infant with Thy Holy Spirit, to receive him for thine own child by adoption" etc.

If regeneration in the baptismal service signifies adoption, and not conversion, then we could endorse the Order, as it would imply not a new nature, but a new condition; not a change of heart or conversion, but a change of relation or privilege, i.e., adoption.

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ST. PAUL'S EPISTLE

to

P H I L E M O N.AGENCY AND REPRESENTATION.

WE may define "representation" as the performance of an act not contrary to the law, by one person acting for another. In reality it meant a juristic act concluded in the name of another.

"Roman Law was very slow to recognise the idea of representation and the sphere within which it was applied remained throughout a restricted one. In case of 'tutorial' and 'procuratorial' representation alike, Roman Law adhered to the rule that a juristic act could be concluded only by a person in his own name."  
(Gaius iv. 83, 84. )

St. Paul's words in the epistle to Philemon incidentally touch upon the rights and duties of the master in reference to the agency of his slave. (Philemon 17, 18, 19.)

A wrong done by the slave was regarded as a wrong done by the master. A difference in the respective liability of the master and slave was recognised in the sphere of criminal and civil law. Within the sphere of criminal law, there was a direct and complete recognition of the slave's responsibility. By the precepts of the civil law, in reference to the rights and obligations of third parties, the slave's personality was identified or submerged in that of his master.

In such cases as *bona vi rapta*, *damnum*, or *injuria*, the master was permitted to choose, whether he would pay the damages assessed or surrender the wrongdoer.

Verses 9, 10. These verses taken together, seem to contain two references to the Roman law, viz. a plea for legal pardon and a hint at emancipation. (a) "I beseech thee" puts Paul in the position of a formal precator. The law gave the Roman slave one real right. It relented with humane inconsistency on one point, and one only. For the slave in the Roman Empire the

right of asylum did not exist. His only conceivable resource was that he might, in his despair, fly to a friend of his master, not for the purpose of concealment, but of intercession. The owner, who was absolute as far as any formal tribunal was concerned, might be softened by the entreaties of a friend who took upon himself the office of intercessor. The Roman jurisprudence formally declared that the slave, in flying to a friend of his proprietor with this intention did not incur the enormous guilt of becoming "fugitivus". St. Paul, indeed, was unable to appear with Onesimus, but in the emphatic and repeated "beseech", he seems to declare himself the legal precator.

(b) The hint at the emancipation is contained in the recognition of Onesimus by St. Paul as a son. Of the various forms of "manumissio justa", the adoptive stands in the first rank.

With the title of son, the rights of domestic and civil life flow in upon the slave, new-born into the common family of humanity. May there be a yet further allusion? St. Paul, indeed hopes to see Philemon again (v. 22). Yet he may die. In these literally "precative verba" ("I beseech," "I beseech thee," v. 9.10) in what may be his last will and testament, he lays upon Philemon, as if his heir, the duty, not only of pardoning, but of giving manumission to the penitent slave.

In V. 17. St. Paul enjoins Philemon: "If thou countest me a partner, receive him as myself."

The word "wronged" ( $\eta\delta\epsilon\lambda\kappa\eta\sigma\epsilon\iota$ ), expresses the class of delicts contemplated by the legal term "injuria".

Although St. Paul possessed the right of surrendering the person of the slave, and thereby securing immunity for himself, yet the apostle desires full reparation to be made, so that no wrong of any kind may be done to Philemon. "But if he hath wronged thee at all or oweth thee ought, put that to mine account."

"I, Paul, write it with mine own hand, I will repay it."  
(v.v. 18, 19.)

With regard to this I.O.U formula, we note that Hugo Grotius

and Daniel Shraderus were of opinion that this was a case of agency or guarantee. Looking at it from the point of view of Roman Law, it was to them a "constitutum debiti alieni", but Professor Otto Eger considers it a private "intercession", a releasing adoption of the debt such that the old debtor is acquitted of his debt, and another takes his place as debtor.

Deissmann says "that the wish expressed in V. 13 that Onesimus the slave, who has run away from his master Philemon at Colosse, and is now with St. Paul, might serve the apostle in his captivity as the agent of Philemon, would be, if there is really a legal allusion here at all, explainable even on Roman principles - the slave represents his master. But when St. Paul, after speaking of his convert Onesimus in verse 10 as his child, goes on to put himself in his place financially in terms of the adoption of a debt, this is best understood as a father's agency for his son, according to the Greek law and Hellenistic law of the papyri."<sup>(1)</sup>

Dr. Otto Eger in his suggestive remarks on the juridical character of this beautiful epistle, refers to vv. 19, 20, thus: "An important point is that of the binding power of the written promise (v. 19), it constitutes an obligatio, Verse 20: 'yea, Brother, let me have joy of thee in the Lord.' (ὀραίνωμεν ) Certainly the first thing that occurs to one is that apparently there is a play on the name Onesimus, but there may be possibly a legal meaning in the word. In a papyrus dealing with the acknowledgment of indebtedness for a loan, the creditor apparently has a claim to the usufruct of certain lands belonging to the debtor. (ὀρῶμεν περὶ τῆς ἀπορίας ) May Paul in the same way in his counter-claim, mean that he had a claim to the person of Philemon as his debtor?" (Verse 19.)<sup>2</sup>.

NOTE: Had Paul not returned Onesimus to his master, he would have been guilty of violating the provisions of the "Lex Fabia de Plagiariis."

1. Deissmann: "Light from the Ancient East", page 332.

2. Otto Eger's RECHTSGERCHICHTLICHESZUM N.T. pages 45,46.

THE PRAETORIAN WILL.

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THE ancient Roman will presented a remarkable contrast to its modern representative, since its chief purpose was not so much to transfer property, as to appoint an heir who might represent the personality of his ancestor. This purpose was a vital consideration of the time.

Further, the ancient will in Rome was public, irrevocable, and took immediate effect; in a word, it resembled a modern conveyance of property, becoming operative in the moment of its completion. Subsequently, another form - the Praetorian Will - came into use; in it the features which characterised the older form disappeared, and it became a private instrument revocable by a later will, and taking effect only after the testator's death.

We believe that we have a good illustration of the Praetorian will in the Revelation of St. John the Divine, a book which undoubtedly has a Roman background. In Revelation V. 1,2,9, we have the words: "And I saw in the right hand of Him that sat on the throne a book written within, and on the back, close sealed with seven seals" ..... "Who is worthy to open the book and to loose the seals thereof?" ..... "And they sing a new song, saying, 'Worthy art thou to take the book and to open the seals thereof, for thou wast slain and didst purchase us unto God with thy blood.'"

The general imagery of the passage, and the terms employed, confirm us in our belief that the whole passage must be explained in the light afforded by Roman Law.

In V. 1. St. John represents in the right hand of God the Father, a parchment roll, the Testament of His providential history and the expression of His purposes, "closed and sealed with seven seals."

Now, the Praetorian will, when written, was witnessed and sealed sevenfold. It differed from the old "mancipatio" or sale, in that the contents were thus secret, and the seven witnesses attested the genuineness of the document, as opposed to the old five who, besides the 'libripens' and the 'familiae emptor', only attested the genuineness of the act.

The seven seals which close the roll, serve to authenticate the document. The roll (*βιβλίον* .) is the testament which expresses the will of the Testator (the great Divine Father) concerning the inheritance reserved for the saints. "He that overcometh shall inherit these things (A.V. "all things") and I will be his God and he shall be my son."

The Divine Son, the Heir of the Father, the Lion that is of the Tribe of Judah, the Root of David, alone hath overcome; He alone was able to open the book, and the seven seals thereof.

This imagery is very striking and the very term used of the whole of the gospel legacy, the 'New Testament', seems to bear witness in its use to the legitimacy and the power of the illustration both here, and as made use of by the writer to the Hebrews.

Besides what has been said, it is worthy of notice that Christ is represented as the High Priest as well as the Mediator of a new and better Testament to His Church. Thus the mingling of metaphors may not be so arbitrary as at first sight would appear. The heir of ancient Rome was also a hierophant. The institution of the will itself was probably due to the horror with which the ancient world regarded any neglect of the dead in respect of those duties which were the first functions of the heir. The "Manes" must be propitiated, and the departed and the survivors both looked, so to speak, to the heir to keep the communication between them unbroken. So the inheritance has an early sacerdotal aspect. Christ is both High Priest and also "Surety" of the better Testament. Here is the gospel in terms of the Roman Law.

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STIPULATIO:

IN Roman Law the Stipulatio was the chief formal contract. It may be traced back to a hoary antiquity; it survived in full vigour to the dissolution of the Roman Empire. The word is probably derived from stipulus (strong or binding), though some Romans derived it from stips (coin). Its older name had been "sponsis" connecting it with libation at an altar to the National gods. The Pontiffs would naturally see to the performance of promises so guaranteed. The actual libation presently dropped out, but for ages the mystic verb spondere must be spoken, and to the last the question asked by the intending creditor (stipulator) would often be expressed by sticklers for form, as "Spondesne mihi? (hominem, or the like) dare?" And the intending debtor (promissor) would answer "Spondeo".

We see here first that stipulation consisted in question and answer; next that it was unilateral, binding only the promissor. Thus to stipulate, in the Roman Law, does not mean to make a promise, but to ask for a promise; the stipulator was always the creditor.

Stipulation as a civil contract was at first confined to citizens; later aliens were allowed such forms as "dabisne?" "faciesne?" Later still, citizens and aliens alike could use any words sufficiently expressing their intention.

"Conditio" and "pactum" take us to the barrister's chambers or lawyer's office, where clients are agreeing to terms and conditions of a contract drawn up by the jurist. The normal effects of a juristic act were the result of a collateral agreement between the parties of the act. Every juristic act had three qualifications, one of these was called the "condicio".

On the fulfilment of a condition the juristic act produces ipso facto its normal legal results, effecting a transfer of ownership - "with no further right to our own souls."

Again the word "pactum" is a prominent term in legal phraseology. A pact is an informal declaration of consent. Apart from the imperial pacts which were called "pacta legitima" the term "pactum" was strictly applied to an agreement not enforceable by action. But from an early period the praetors allowed such ~~treatments~~ agreements to be used by way of defence. When he became a Christian, Tertullian describes the contract which he entered into, and he thinks of legal documents to which he has been one of the parties. He was fully aware of the struggles awaiting him. The contest was against institutions, customs, antiquity, the whole machinery of the law of the empire would be working against him. He is well versed in the rules and regulations of criminal procedure. There were risks of informers and blackmailers, Jews and soldiers, to which Christians were subject, and these could be produced as witness against the Christians in the law courts. "How are we to meet at all?" asks the anxious Christian, "unless we buy off the soldiers?" "By night", says Tertullian, "or let three be your church."

DEPOSITUM: This was gratuitous, universal and solely for the benefit of the depositor, who desired safe custody for his property. The depositary ("Depositarius") was therefore liable only for fraud or gross negligence ("culpa lata") except when he (a) expressly warranted safe custody against all risks, or (b) voluntarily persuaded the owner to deposit with him.

ARRABO (Arra).

Earnest, given sometimes as evidence of a bargain. sometimes as a deposit by way of part payment.

## TWO FORMS OF PLEDGE:

- (a) Pignus
- (b) Hypotheca

(a) Pignus (or inpignoris) included all forms of what we call mortgage and pledge. Inpignus (the debtor) gave possession (not ownership) of the land or chattel he offered as security. The creditor generally had only bare possession, i.e. he could not use the thing for profit; if by express agreement he could, this was antichresis, and the profits replaced or lessened interest, as in our Welsh mortgages.

(b) But the form "Hypotheca" became commoner; it was created by the pact so-called. The creditor in this form had neither ownership nor possession of the security; the debtor merely gave him a charge on it. Both pignus and hypotheca gave the creditor an implied power of sale over the security.

### PECULIUM:

(a) Under the title of peculium a slave with his master's permission might have the enjoyment of property. Whatever a slave might have as peculium, whether the savings from exceptional industry, or gifts as a reward of extraordinary service, was protected by custom and public opinion, although not by law. This protection seems to have sufficed, for the cases were not rare in which the ~~slave~~ was able to buy his freedom out of the accumulations of his peculium.

(b) SON'S PECULIUM: Originally everything acquired by a filius familias belonged to his father, and even under Justinian this would be so, unless some reason was shown to the contrary. For the old historic peculium of a son was exactly like that of a slave, a revocable allowance by grace of his father. This was afterwards distinguished as:

(1) Peculium Profecitium. But Julius Caesar temporarily and Titus permanently had established (2) Peculium Castrense. This was merely one of the many priveleges granted to soldiers; it included every acquisition received by a son in respect of his military service, such as his outfit, from whatever source derived, his pay, his share of booty, etc. This was really his own which he could keep or alienate "inter vivos" or by will.

(3) Peculium Quasi-castrense, a much later invention, covered all gains by the son in any of the higher offices of the civil service; this also belonged out and out to the son.

(4) Peculium Adventitium was at first confined to gifts from the mother; eventually it included all property of the son which did not come under any of the other three heads. But his father had the usufruct of this for his life, the son having only the reversion or "nuda proprietas".

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MUTUUM, in Roman Law was the giving of any "res fungibiles" to another as his property, with the intention that at some future time he shall have ~~be~~ returned to him, not the same things, but others of the same nature and quality. "Res fungibiles" are things dealt with by weight, number, or measure, as silver, gold, bronze, money, corn, wine, oil.

Mutuum was thus a gratuitous loan. It carried no interest unless an independent obligation was created by stipulatio for that purpose. A promise to lend could not be enforced, but if the things were actually lent it would have been manifestly unjust not to compel the debtor to ~~repay~~ repay according to his promise.

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The Terms "EDICTUM", "DECRETUM", and "RESCRIPTUM".

The sovereign power was exercised by emperors in three ways:

- 1st. by direct legislation ("edicta")
- 2nd by judgments in their capacity as the supreme tribunal  
(decreta)
- 3rd by "Epistolæ", or "Rescripta", giving advice on questions of law to inferior judges.

This authority seems to have been conferred by statute (lex regia) at the beginning of each reign.

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TERTULLIAN.

From whatever angle the history of the early Church is approached the writings of Tertullian are of great significance. He is one of its most interesting personalities. His early training, his experience of pagan life, his whole-hearted adoption of the Christian religion, his self-elected position as the champion of the faith, his love of writing, his secession to the Montanist movement, and above all, his irrepressible love of argument, have combined to establish him as the Father of Latin Christianity, and to make the study of his writings an indispensable task for those who would know the early Christian Church and its relationship to the world around it.

As a child he breathed the atmosphere of a typical Roman household with its emphasis on the material side of life, and its meticulous culture of the tutelary deities. Here he imbibed through fable and tradition the rudiments of his national religion, and here he learnt the respect due to Roman law and the un-failing obedience required by Roman military discipline.

At school the literature and history, the philosophy and the rhetoric of the day were acquired, not without the school-boy's derision of the peculiarities of his instructors. Due attention was again paid to the claim of every god. Meanwhile, the youth found his share of the social and public life of the city, the circus, the theatre, the public demonstrations all appealed to and found a place in the affections of the vivacious lad.

How far in manhood's day Tertullian entered into the pleasures and profligacy of Carthage it is impossible to say, but there are undeniable indications in his writings that the vehement denunciations of later days were expressions of a reaction against the indulgences of former times. His puritanism was the result rather than the cause of his conversion. When he became a Christian, however, Tertullian was not satisfied with

any half-measures: his conversion meant a total and complete break with the past. The logic that convinced him of the desirability of embracing the Christian faith convinced him too of the irreconcilable character of the pagan life, and the Christian. He could never accept the one and tolerate the other; to blend them was utterly impossible.

Having taken up his position as a Christian (as the result, no doubt, of a careful and lawyer-like balancing of the evidence) he inevitably found his way to the front. He knew all that could be said against the new religion before he embraced it. He knew too, a great deal that could be said for it. Being convinced that there was more to be said for it than against, he accepted it, and forthwith set out to defend it with acumen and vehemence. He was soon busy with another task, for he found that the religion he had embraced was as much in need of definition among its devotees as it was of defence against its foes. He gave form and shape to much that was chaotic, and clear utterance to much that was vague and incoherent. Under his guidance Christian thought became a system.

He brought into the Christian Church the mind of a master and made the contents of its teaching conform to the rules of his logic. His passion for definition was insatiable. Beginning with such rudiments of a theology as he found among his fellow-Christians he began to examine and enlarge and expound until he had set forth a reasoned exposition and defence of the Christian faith. The Christian view of God, of Man, of Sin, and of Christ and Redemption are treated with a fulness unexampled by his predecessors. The extent and the value of his contribution has been lost sight of in the past, because no adequate distinction was made between his earlier and later writings, with the result that his earlier and tentative statements have been confounded with his later and maturer thoughts. In recent times the collation of his writings in their chronological order has served

to give a truer perspective and to reveal the solid contribution he made to the theology of the early Church, and to the formation of the technical language of Latin theology.

His love of writing has proved, as indeed it proved to himself, both a bane and a blessing. He had a decided flair for religious journalism. He wielded a facile pen, and felt that he must write a pamphlet on every subject that either interested himself or was discussed by others. He is scarcely over the threshold of Christian experience, but he must write a thesis on the - for the moment - absorbing question of baptism. Having renounced the shows for himself, he must denounce them for others. He is inevitably drawn to express his opinion on such questions as prayer, penitence, monogamy and modesty, to say nothing of patience! He must compose a treatise, or half-a-dozen against every heresy, and he must write a thesis on every great doctrine. He even dares to write about ladies and their toilet.

For this "itching pen" of Tertullian, we must be duly grateful. It has given us reliable information on the state of religious thought, and on the condition of the spiritual life of the Church of his day. It has enabled us to see who and what were the foes and perils of Christian life and thought, and what were the relations of Christians to one another and to the pagan world. But our gratitude is tendered with reserve when we discover that Tertullian was so much a child of his own age, that so large a portion of his writings are of interest to the student alone. We find too, that we have to discount a great deal that was written in the heat of controversy, or that could in the nature of things have but an ephemeral interest.

One of the traits in Tertullian's complex character that ensures our interest in him is his adaptability to new conditions and his never-failing readiness to go on to what seems to him to be a fuller revelation of the truth. This accounts for much that appears paradoxical in his writings. If consistency is indeed the "hobgoblin of little minds", Tertullian is not among the cowardly inferiorities. He does not hesitate to discard a



position that is untenable: he hastens to secure a new point of vantage. But of the consistency that comes of following the truth through varying phases he has a generous share. That is why he is ready at once to defend the "Rule of Faith" and to go beyond it, at one and the same time to deride pagan philosophy and to appropriate all that is good in it. That also is why he can heatedly denounce heresy and yet become a heretic himself.

Not the least interesting feature of Tertullian's writings is the fact that they indirectly reveal so much of himself. The military metaphors with which his writings abound are reminiscent of his childhood spent in the atmosphere of a centurion's home. The literary allusions, the medical and philosophical lore reveal the breadth of his interest. It is in this indirect way that we are driven to deduce, what he never expressly says, that he received a legal training and had meant to make the practice of the law his life's work. Legal ideas, metaphors, and above all, his evident mastery of the advocate's artifices make this conclusion inevitable. His works abound with expressions that have become proverbial: "What greater pleasure is there than to despise pleasure!" "The blood of martyrs is germinant." "Christians are made, not born." "Christ is truth, not custom." "Where there are three, even be they laymen, there is the Church." "Are not we laymen too priests?" "It is contrary to religion to compel religion". "I believe because it is absurd" "It is absolutely credible because it is absurd - it is certain because impossible." "What has Christ to do with Plato, or the Church with the Academy?" "Truth is not on the surface, but in the inmost heart." "The human race has always deserved ill of God." "How wise an arguer does ignorance seem to herself."

These terse expressions and many more shine out like jewels on a dark background on almost every page. His style has been compared by Balzac to ebony, at once dark and resplendent. The style is of the man; it is incandescent as the heart from which it is poured forth. Austere, fiery, satirical, passionate, dictatorial, learned, hyperbolic, he reminds us of no writer

so much as of Carlyle. But much as Carlyle resembled Tertullian in vehemence and exaggeration, he never sunk so low into subtle special pleadings, "quaint conceits, small retorts."

THE FORENSIC COLOURING OF TERTULLIAN'S  
CONTRIBUTION TOWARDS THE FORMATION OF  
CHRISTIAN DOCTRINE.

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Hannack reminds us that, "The Roman Church passed on Christianity to the Middle Ages." Early in the history of the Latin Church there stands the great and influential figure of Tertullian in whose personality and work there lay the germ of the character and future of that Church. He, together with Augustine, not only by their special and definite forms of teaching, but by their characteristic thought and feeling entered largely and lastingly into the history of the Western Church. "Of the men who moulded Western Christendom few have stamped themselves and their ideas upon it with anything approaching the clearness and the effect of Tertullian. He first turned the currents of Christian thought in the West into channels in which they have never yet ceased to flow and will, probably, long continue to flow. He was the first Latin Churchman and his genius helped to shape Latin Christianity." (Glover, "Conflict of Religions". -p. 306.)

In estimating the character of Tertullian's teaching is must be remembered that he belonged to the age of the Apologists, and stood only at the beginning of the succession of Schoolmen with their closely reasoned and articulated systems of Theology. Christianity was faced with the philosophical attacks of opponents as well as with the views of various heretical sects, so the form <sup>of the</sup> ~~by~~ teaching of the Apologists was largely determined by the necessity of meeting these. We are not, therefore, to look in the writings of Tertullian for a coherent, closely welded and systematised theology; indeed, as it has been remarked, "Tertullian himself did not feel the slightest necessity for a systematic presentation of Christianity." "His dogmatising was

incidental." In the fullest sense of the word, and in comparison with many <sup>other</sup> of the thinkers, he was not a speculative theologian, but a dialectician. The cast of his mind ~~dees~~ was not speculative but dialectical. He was a "philosophical advocate."

It has been remarked with truth that as a systematic thinker "his theology is completely void of unity", and that we find inconsistencies, paradoxes, truths not closely related, nevertheless, Tertullian prepared the way for the more coherent and closely articulated systems of a later time; he prepared foundations on which later structures were built and supplied thoughts and formulae which helped to shape the more systematic teaching of the Scholastic Theology and secured a deep and abiding influence in the Western Church.

In seeking to understand the influence of the early Christian thinkers, regard must be had to their personality and type of mind. The mind of Tertullian was essentially of a legal type, and one of the most powerful factors in shaping his habits of thought was that of Roman Jurisprudence. "He enjoyed the reputation of being one of the most eminent jurists." When men entered into Christianity they did not divest themselves of their personality, their modes and instruments of thought, so when Tertullian became a Christian he did not cease to be a Roman lawyer. "In point of fact, the quondam advocate never disappeared in the Christian Presbyter." Because this was so, he gave a juristic character to all his thinking on the theology and policy of the Church. Whether in his thoughts of the character of God, or of the relation of God and man, or of the nature of the Gospel, or of the processes of Salvation, his thinking is governed by legalistic influences. "If Tertullian had not been a jurist his theology would not have been what it is, especially as regards those very elements and terms by which it has most powerfully affected the development of dogma!" (1)

Moreover, Tertullian was largely the product of his time;

1. Fairbairn. "Christ in Modern Theology." p. 39.

the legalistic spirit and form of his theology he owed to the general spirit of the age. The Roman people were distinguished above all others in their genius for the science and practice of jurisprudence, and whenever Roman Rome extended her power she not only imposed her legal <sup>rights</sup> ~~rights~~, but awakened the interest of her subject people in all matters of law. The world-wide extension of the Roman Empire had stamped the forms of law upon all society, and breathed the legal spirit into all organisations. Maine, in his "Ancient Law" says, "The premium on the study of jurisprudence was so enormous that there were schools of law in every part of the Empire". He further draws attention to the fact that "in the frame of mind to which the problems of Western Theology proved so congenial, in the phraseology in which these problems were stated and the description of reasoning employed in their solution", <sup>it</sup> ~~it~~ is easy to recognise the influence of the Roman penal system, the Roman theory of obligations established by Contract and Delict, the Roman views of debts and the modes of incurring, extinguishing and transmitting them."

It was both certain and natural that the studies of men trained in the schools of secular law should have considerable influence on the form and substance of their theological speculations. This was largely true of Tertullian. "Before the close of the second century and whilst Roman Jurisprudence was still at the height of its activity, law and theology met in the person of Tertullian."<sup>(1)</sup> It was to a considerable degree through him that legalistic influences were at work in the Church which became a kind of State, and the ideas of law were stamped upon its polity and doctrine. "All Christian forms received a legal impress; he contemplated from a legal standpoint all the relations of the individual and the Church to Deity; he seemed never to be thoroughly satisfied until he had formed ~~a~~ <sup>a</sup> scheme of legal relationship."<sup>(2)</sup>

1. Ball "St. Paul and the Roman Law". p. 70.

2. Harnack: "History of Dogma". Vol. v. pp. 16 & 17.

"To Tertullian the revelation through Christ is no more than a law. So his writings are not only full of the maxims and technical terms of Roman law, and of allusions to its procedure, they present every doctrine from a legal standpoint."<sup>(1)</sup>

The influence of Tertullian lay to a considerable extent in his contribution to theology and of its formulae of dogma and its terminology. He created and expanded the most important formulae, expressing the doctrinal teaching of Christianity, chiefly in statements of a legal character, which were largely incorporated by succeeding Fathers into the dogmatic systems of the Catholic Church. Moreover, he was the creator of certain concepts which have had a large influence on the doctrinal systems of later ages. Harnack remarks succinctly that "what influenced the history of dogma was his masterly power of framing formulae." Next to his power of forming dogmatic concepts there lay his ability of finding accurate and fitting terminology in which to crystallise them; in this Tertullian, by a series of terms derived from Roman law and usage, exercised a powerful and abiding influence on the Theology of the Catholic Church.

#### HIS DOCTRINE OF GOD.

When the exigencies of any case demanded the offer of formal arguments for the existence of God Tertullian is prepared to show the bases of belief which lie in the evidence from God's works in physical nature, in the testimony of the naturally Christian soul and in the witness of Scripture. This, however, was not a presentation of systematic argument, such as would be given in ~~other~~ <sup>modern</sup> works of dogmatic theology. Tertullian rather assumes that statements as to the existence of God may be taken for granted without the necessity for formal proof.

The prevalence of pagan polytheistic ideas of deity, the dualistic conceptions of certain heretical teachers and the doubtful influence of other prominent theologians led Tertullian to assert with ~~positiveness~~ <sup>firmness</sup> and clearness the unity and supremacy of

1. G. <sup>G. W. H. W.</sup> ~~Watkin~~. "Knowledge of God." Vol. ii. p. 163.

God. It is the "one-only God" whose existence he strongly affirms. He holds with a strong grasp the conception of the unity of God.

Among the moral attributes of God, to which Tertullian gives chief prominence, are goodness and justice. The goodness of God existed before creation as an eternal attribute of God. It is clearly seen in Creation itself. It is manifest in the self-communication of God to man; manifest even in the imposition of law, which in itself is intended to secure the happiness of man. Side by side with goodness was justice, which was equally an innate and natural property of God, an attribute "which advanced in company with goodness, not as accidentally accruing to God, but was found to be in Him, the Lord, the arbiter of his works." The imposition of law was a manifestation of the goodness of God, so the attaching of penalty to failure to keep the law was at the same time a revelation of goodness and justice. By means of the doctrine of justice a juristic relation to God was established and a legal character given to all the relations between God and man.

God is portrayed at length as a Judge, and the relationship of men to Him is pre-eminently that of criminals to a Judge, and in consequence, we find such terms as *satisfacere*, *offendere*, *promereri*, *acceptare*, and *rependere*, prominent in his theology.

God is the Judge administering justice." Well, since God as Judge, presides over the exacting and maintaining of justice, which to Him is most dear, and since it is with an eye to justice that He appoints all the sum of his discipline, is there room for doubting that, just as in all our acts universally, so also in the case of repentance, justice must be rendered to God?"<sup>(1)</sup>

God is, however, not only the Judge who administers the law, He is the Giver of the law. It is because He has commanded that man must obey. "What God enjoins is good and best. I hold

(1) "De Poenitentia". c. 2.

it audacity to dispute about the "good" of a divine precept, for indeed, it is not the fact that it is good that binds us ~~to~~ obey, but the fact that God enjoins it."<sup>(1)</sup> "At the same time what God enjoins is rational". "Reason in fact is a thing of God, inasmuch as there is nothing which God, the Maker of all, has not provided, disposed, and ordained by reason; nothing which He has not willed should be handled and understood by reason."<sup>(2)</sup>

Working thus in the realm of law he is far from the teaching of Jesus on the Fatherhood of God, and our simple filial relation to Him, and so is far from the teaching of Jesus on the love of God. Tertullian never really attained to the full New Testament teaching of the love of God. Although admitting in some degree the Fatherhood and love of God, he could not escape from those ideas of justice which shaped and coloured his teaching on the relations of God and man.

(1) "De Poenitentia. c.4.

(2) "De Poenitentia". c.1.



### THE TRINITY.

Tertullian was the first of the great Fathers to attempt a clear and systematised statement of the doctrine of the Trinity and to use the word Trinity in connection with the Godhead, although perhaps, not in the full sense of a later precise meaning of the word.

In his definition of the doctrine he placed great emphasis on the unity of the Godhead in substance, while maintaining strongly a real distinction of persons. "All ~~there~~ three are one by unity of substance", but, "notwithstanding the intimate union which subsists between Father and Son and Holy Spirit, we must be careful to distinguish between the persons."

"For though the Father, the Son, and the Holy Ghost are three, they are three not in dignity but in office, not in essence but in attribute, not in might but in manifestation; of one essence and one dignity and one might, because one God from whom these offices and attributes and manifestations in the name of the Father, the Son and the Holy Ghost are derived."

(Adv. Praxeas Ch. 2.)

"The orthodox never speak of two Gods or two Lords though they affirm that each person in the Trinity is God and Lord."

(Adv. Praxeas Ch. 15). "The Christian verity has distinctly declared that God is one." (Adv. Marcion. Ch. 7).

"Neither is less nor greater than the other, neither is lower nor higher than the other." (Adv. Hermogenes Ch. 7.)

In the attempt to maintain a real distinction of persons with unity of substance Tertullian makes important use of the word "persona". Doubt has been expressed as to whether this term had originally a juristic meaning. Dr. Schlossman says that it had not, but Dr. Bethune Baker and Dr. Holland are strongly of opinion that it was undoubtedly a law term.

The word <sup>first</sup> ~~just~~ meant a mask (worn by an actor) then a masked man,

then it referred to the part played by the actor, finally passing into meaning "a man looked upon from some distinctive point of view, i.e. the man himself as far as he has this or that "persona" (1) Fairbairn says that "persona is a legal term denoting the party or name to a suit." (2)

"Persona" is used by Tertullian in close connection with the word "substantia", the latter term meaning the property or possessions of one who was qualified to hold them.

"Substance, according to the teaching of the jurists, suggested the idea of property, rather than<sup>7</sup> anything personal, that is to say, property employed in reference to the idea of possession, or in reference to the essence as distinguished from the manifestation or status." (3) The one who was recognised by Roman law as qualified to hold such possessions was a "persona". (4)

When these terms were taken into theological usage it became plain how Tertullian could employ them in defining the doctrine of the Trinity, using "substantia" as meaning property or possession, and "persona" as one who has a right of property, it is easy to pass to the thought of Tertullian of one "substantia" in which three persons have equal rights.

Thus Tertullian asserts the oneness of Substance with a clear distinction of persons, but this distinction of persons must not be pressed to the point of distinct individual<sup>tion</sup>isation, He says that while "we must be careful to distinguish between persons, the orthodox never speak of two Gods or two Lords, though they affirm that each person in the Trinity is God and Lord."

Such terms as "substantia" and "persona" it must be remembered, had a fluctuating meaning, and had not yet attained the fixity of meaning which the notion of personality has reached

1. Morgan: "Importance of Tertullian in the development of Christian dogma." p. 34.
2. Fairbairn: "Christ in Modern Theology". p.99
3. Morgan: "Importance of Tertullian in the development of Christian dogma." p30.
4. Roberts: "The Theology of Tertullian." p 32.

in the modern sense of the word. Fulton remarks that "Persona" on the whole was the best word by which to convey the idea of an inner principle of distinction or individuation, and it was a good enough word when it bore a vaguer and more flexible meaning than it bears now-a-days in Western Europe.<sup>(1)</sup> Fairbairn has pointed out a further<sup>and</sup> extended use of the word "persona". He, Tertullian, "speaks of the "personae" as "officiales", the agents of an administration. The Godhead is a monarchy, and monarchy signifies nothing else than "singulare et unicum imperium", but the authority does not cease to be one by having more than one minister, and so, speaking like a Roman jurist, he describes the Son and the Spirit as 'consortes substantiae Patri', with whom He speaks "quasi cum ministris et arbitris ex imitate Trinitatis." To be this were they created for Son and Spirit alike owe their being to the Father."<sup>(2)</sup>

It has been held by some writers that Tertullian's view was that of an Economical Trinity, Harnack going so far as to say, "Tertullian knows as little of an Immanent Trinity as the Apologists. The Trinity only appears such because the unity of substance is very vigourously emphasised."<sup>(3)</sup> Other writers hold that Tertullian gets at times beyond a formal Trinity and that he does postulate an Immanent Trinity.

In judging Tertullian's treatment of the doctrine of the Trinity as also that of other subjects, together with his imperfections and limitations, one has to remember that his formal teaching was largely determined by the apologetic purpose of his writings. In spite, however, of imperfections, he indicated clearly and with considerable fulness, lines on which succeeding speculations could work, and prepared the way for the more balanced and systematic presentations of doctrines of later times.

1. Article "Trinity" in Dictionary of Religion & Ethics.  
2. Fairbairn: "Christ in Modern Theology." p. 99.

3. Harnack: "History of Dogma", Vol. ii. p. 260.

There is no doubt that Tertullian's familiarity with legal terms and ideas and his adoption of them in working out the Trinitarian doctrine, contributed considerable help to succeeding workers in the same field. Harnack remarks that "his juristic terms enabled him to set forth the doctrine of the Trinity in accordance with the views later developed by the Cappadocians."<sup>(1)</sup>

*Harnack. "History of Dogma"*  
1. ~~Para.~~ Vol. v.

## CHRISTOLOGY.

Harnack speaks of the Christo-centric theology of Tertullian and remarks that "Tertullian owes his Christo-centric theology, so far as he has such a thing, to Irenaeus." Whether that is entirely true or not, it is true that the Christo-centric view of the divine economy is seen in the writings of Tertullian, but it did not become a leading conception with him. Nevertheless, he made a distinct and important contribution to the doctrine of the Person of Christ which influenced the speculations of succeeding thinkers.

The teaching of Tertullian is emphatic on the consubstantiality of the Son with the Father. The Son is of the substance of the Father. "We have been taught that he proceeds forth from God from unity of substance with God. For God, too, is a Spirit. *and in that procession he is generated, so that he is the Son of God & is called Son*" Even when the ray is shot from the sun it is still part of the parent mass. The sun will still be in the ray because it is a ray of the sun; there is no division of substance but merely an extension. Thus Christ is Spirit of Spirit and God of God, as light of light is kindled."<sup>(1)</sup>

"The Son is another in Person, not in substance, in the way of distinction not of division. (Adv. Praxeas Ch. 12)

Bishop Bull says "Read only his single work "Adversus Praxeas" in which he treats fully and professedly of the most Holy Trinity; he there asserts the consubstantiality of the Son so frequently and so plainly that you would suppose the author had written after the time of the Nicene Council."

On the question as to whether the Son is co-eternal with the Father, there are passages in Tertullian's writings which seem to imply that there was a time when the Son did not exist. He refers to "God's own dispensation in which He existed before the creation of the World up to the generation of the Son." (Adv. Praxeas Ch. 5)

(1) Apologeticus. Ch. 21.

On the other hand by curious speculative reasoning Tertullian established a sort of co-eternity in the relation of the Son ~~and~~ to the Father. Morgan quotes Bishop Bull as saying "according to our author, (Tertullian) the reason and Spirit of God being the substance of the Word and Son were co-eternal with God, but that the titles of the Word and Son were not strictly applicable until the former had been emitted to arrange, the latter begotten to execute, the work of Creation."<sup>(1)</sup>

While the Son is of the same substance with the Father, Tertullian holds that in some sense the Son is subordinate to the Father. "The Son is subordinate to the Father, as He comes from Him as the principle but is never separated."  
(Apologeticus Ch.21.)

"What the Son possesses has been given Him by the Father; the Father is therefore greater than the Son; the Son is subordinate to the Father."<sup>(2)</sup> "The subordination of the Son, suggested by Tertullian, appears to be derived from his juristic ideas of the "Monarchia" of God, the Son being looked upon as an administrator. The Son and the Holy Spirit differ from the Father only in rank. They derive both their origin and their power from Him."<sup>(3)</sup> The Son is regarded by Tertullian as the agent of the Father in the creation of the world." Then therefore does the Word also Himself assume His own form and glorious garb, sound and vocal utterance, when God says, 'Let there be light'. This is the perfect nativity of the Word, when he proceeds forth from God, formed by Him first, to devise and think out and afterwards begotten to carry all into effect." (Adv.Praxean.Ch.7.)

The Revelation of God is also made through the Son. The Father Himself is invisible - "No man hath seen God at any time." "He dwells in light which no man can approach unto", but in the Son He has revealed Himself. Every revelation made known to men

1.Morgan: "Importance of Tertullian in the development of Christian dogma." p. 157.

2. Harnack: "History of Dogma" Vol. II. p 259.

3. Morgan: Vide Supra. p.111.

prior to the Incarnation was made by the Son, and every affirmation given in the Old Testament that God was seen of men and spoke to them, is to be explained as the appearance of the Son, but not his appearance in real presence, seeing that the Incarnation had not taken place, but in visions and dreams, anticipating the revelation of God in a human life through the Incarnation.

## THE INCARNATION.

The teaching of Tertullian on the Incarnation is very clear and full. He speaks of the Son as a ray from the Father.

"this ray of God, then, as it was always foretold in ancient times, descending into a certain virgin, and made flesh in her womb, is in His birth, God and man united. The flesh formed by the Spirit is nourished, grows up to manhood, speaks, teaches, works, and is the Christ." (Apologeticus Ch. 21.)

The Word was made flesh not by transfiguration" which would be the destruction of what previously existed", that could not be, because God could not cease to be what He was and is - but by the Word taking upon Himself the flesh. "Christ is revealed as both God and man assuredly in all respects Son of God and Son of man, God and man of the substance <sup>of each</sup> ~~and flesh~~ according to its own especial property". "God and the man Jesus not confused, but united in one Person." "The divine and human nature making up this Person as soul and body does one man." (1)

In his desire to avoid the conclusion that the union of the two natures resulted in a "tertium quid" Tertullian sometimes speaks of two substances which Christ possesses - "a corporal and spiritual substance of the Lord." In avoiding the confusion of the divine and the human, he distinguishes between what Christ did as man from what He did as God. Concerning this Harnack remarks "Here we have already in a complete form (1) the later Chalcedonian formula of the two substances in one Person."

Having fully developed his doctrine of the divinity of Christ he is concerned to affirm the reality of the Incarnation. He is strong in the assertion of the fact that Christ's body was truly human. Tertullian was confronted by teaching which,

1. cf. Ball. "St. Paul & The Roman Law." pp. 88-9.

2. Harnack: "History of Dogma" Vol. ii. p. 28.



in its insistence on the divinity of Christ was unwilling to admit the real humanity of Christ's body, as derived from the Virgin, declaring that in Christ a portion of the Godhead was materialised. In opposition to this Tertullian affirms that the flesh of Christ was like our own. Everything which is derived from anything else bears the marks of its origin, so the body of Christ shows the marks of its earthly origin, so much so that the eyes of beholders, seeing so fully and really the corporeal substance of man, were blinded to the Son of God. Men everywhere and always were impressed by the reality of His manhood.

Tertullian further insists that Christ assumed a human soul. This assumption of a soul was necessary to the reality of His humanity, because a body is nothing but a dead form without the controlling principle of soul, which is the source of experience, all thought, self-consciousness, and knowledge of God, is the activity of the Soul. His teaching of the possession ~~of~~ Christ of a real body and soul is in harmony with his Anthropology. He held the two-fold division of human nature into body and soul, so in his argument for the reality of the Incarnation he passes simply and easily to the assertion of the real body and soul of Christ. In the clearness and originality of his doctrine of the real humanity of Christ he exercised a great influence on contemporary theology - an influence which, in some measure still abides. "Much has changed", says Dr. Glover, "in outlook and preconceptions since Tertullian wrote, but his language on the reality of Jesus as an actual human being and no sidereal or celestial semblance of a man, on the incarnation and the love of God, still glows and still finds a response." <sup>1</sup>

1. Quoted by Morgan: "The Importance of Tertullian in the Development of Christian Dogma" p. 275.

## THE HOLY SPIRIT.

Prior to the time of Tertullian the doctrine of the Holy Spirit in relation to the subject of the Trinity had not been clearly and fully formulated. In his treatment of the question he exercised considerable influence on the thought of his day. It has been remarked that he was the first great teacher to speak of the Holy Spirit as God. But while recognising the fact that he does so refer to the Holy Spirit it is to be noted that in some parts of his works there are statements of an indeterminate character, which are difficult to reconcile with a full belief in the distinct personality of the Holy Spirit. Dr. Roberts notes a tendency in Roman tradition to identify the Holy Spirit with Christ, and that Tertullian sometimes speaks in harmony with that tendency - quoting from his "Apologeticus" terms which refer to the Holy Spirit as obviously Christ. In his "Adv. Heret~~ic~~og" Tertullian speaks of Christ sending the power of the Holy Spirit instead of Himself<sup>1</sup>, "but the thought is not of a distinct hypostasis, ranking with the Father and the Son, but of one of the gifts of Christ to the Church." <sup>1</sup>

Harnack, in his criticism of Tertullian's "Trinity", declaring it to be purely economic, summarises certain defects, some of which are "that the Son and Spirit proceed from the Father solely in view of the work of creation and revelation; that the Son and Spirit do not possess the entire substance of the Godhead, but on the contrary are 'portiones'; that they are subordinate to the Father; that they are, in fact, transitory manifestations." <sup>2</sup>

But Harnack's criticism was not based on the totality of Tertullian's teaching, and was modified by himself subsequently. The imagery used by Tertullian seems to make evident his thoughts of the Holy Spirit as a distinct Person in the unity of the Godhead. "Now the Spirit, indeed, is third from God <sup>and</sup> the Son, just

1. Roberts "Theology of Tertullian" p. 114.
2. Harnack: "History of Dogma" Vol. iv. p.121. Note 3.

as the fruit of the tree is third from the root, or the stream out of the river is third from the fountain, or as the apex of the ray is third from the sun. Nothing, however, is alien<sup>1</sup> from that original source whence it derives its own properties."

Regarding Tertullian's teaching as a whole, it is clear that he thought of the Holy Spirit as in an *immanent* and essential relation to the substance of the Godhead. He places in order and on terms of equality, the Father, the Son, and the Holy Spirit.

1. cf. Roberts. "Theology of Tertullian." p. 137.

## WORK OF CHRIST IN REDEMPTION.

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The legal cast of Tertullian's mind is especially evident in his dealing with the subject of Redemption. The foundation and framework of his doctrine of salvation are legalistic. The relations of God and man are of the nature of a legal transaction. This follows from his fundamental conception of God; God is essentially a Judge whose will finds expression in forms of law. "The majesty of divine power has the right to exact obedience from man. Faith and obedience are the natural answer to the law of God, faith being the unquestioning acceptance of all the contents of that law, and obedience, too, is the expression of faith in performing all that God commands, and in avoiding what He forbids. Sin is a breach of the law, and so sinful men stand as criminals before God, who is an injured and angry Judge."

In dealing with the means and instrument of salvation, Tertullian lays emphasis on the death of Christ. He declares that Christ came to redeem, and to restore, and that by His death, He speaks of Christ's death "wherein lies the whole weight and fruit of the Christian name"; quote St. Paul, "I have delivered unto you how that Christ died for our sins, and that He was buried and that He rose again the third day." "We are not our own, but bought with a price, and what a price? The blood of God". He speaks of Christ the offerer of His own life for the people." "Christ who gave Himself up for our offences". "The flesh was redeemed with a great price, the blood, to wit, of the Lord and Lamb." "For this is the virtue of the Lord's blood that such as it has already purified from sin and thenceforward has set in the light, it renders thenceforward pure if they shall continue to persevere walking in the light."

Tertullian thus teaches the necessity and efficacy of the death of Christ for the salvation of men, but as most of his

teaching appears in apologetic shape, in more or less controversial writing, and he gives us, in no full and systematic form his view of the essential relation between the death of Christ and the redemption of men.

Harnack remarks that according to Irenaeus "reconciliation virtually consists in Christ's restoring men to communion and friendship with God, and procuring the forgiveness of sins."

"In Tertullian and Hippolytus we again find the same aspects of Christ's work as in Irenaeus, but with them the mystical form of redemption recedes into the background." "There are innumerable passages where Tertullian has urged that the whole work of Christ is comprised in the death on the Cross, and indeed that this death was the aim of Christ's mission. But on the other hand he has also adopted from Irenaeus the mystic conception of redemption - the constitution of Christ is the redemption - though with a rationalistic explanation."<sup>1</sup>

In expounding his doctrine of redemption there are elements of his teaching which occupy a prominent position, which are traceable to his legalistic type of mind, and which cannot well be brought into harmony with any true doctrine of the vicarious nature of Christ's sacrifice of Himself. His use and exposition of the terms "satisfaction" and "merit" in their relation to individual salvation, are an illustration of this fact.

We owe to Tertullian the coming into Theology of the term "satisfactio", one of the most important used by him, which he derived from Roman Civil law, and which powerfully influenced the thinking of succeeding theologians.

In a wide sense of the word, "satisfacere" refers to the fulfilment of an obligation without reference to any particular manner in which satisfaction is to be rendered, but in a narrower sense it refers to the fulfilling of an obligation in a manner which may be agreed upon, and which the creditor is prepared to accept as satisfying him.

1 Harnack: "History of Dogma" Vol. ii. pp. 292-3 & note.

In theology, as used by Tertullian, the term "satisfacere" refers to the satisfaction offered on account of man's sin, to an injured and angry Judge, and which God is pleased to accept as the means of reconciliation between Him and man. The thought lying at the root of this is that God has power to enforce His claim by punishment if some kind of satisfaction is not offered. The satisfaction offered is not a vicarious one, but is rendered by man himself, who makes amends for his own sins in a prescribed way. Harnack says, "We may further remark that Tertullian uses the term "satisfacere Deo" about men, but, so far as I know, not about the work of Christ."<sup>1.</sup>

So Tertullian affirms (De Paenit.7) "Thou hast offended but thou canst be reconciled; thou hast one to whom to make satisfaction who also is willing to receive it." He regards God as an injured person ~~was~~ thought of by Roman Law. This satisfaction to God is to be offered through penitence and confession, through penance as a voluntary endurance of punishment which is in substitution for a penalty which would otherwise come upon the sinner through self-humiliation, voluntary self-denial and fasting, and doing of all manner of good works. Tertullian calls these things "satisfactions to God." They are means by which we placate an angry God. Fairbairn says: "The legal idea Paul struggled so hard to expel thus returns in a more aggravated form, not as a Divine institution to purify, but as an instrument of judgment and justice, which those it condemned could yet propitiate. With it enters the notion, so offensive to Paul, of merit, and with merit the idea of the means of creating it, and of its work or function with God. Hence comes the belief in a God who needs to be satisfied, and in penance as a method of satisfaction. In a moment, as twins born of the same idea forensic theology and legal morality came to be."<sup>2.</sup>

1. Harnack: "History of Dogma" vol ii. page 294. Note.
2. Fairbairn: "Christ in Modern Theology. p. 100.

The notion of a legal transaction in the forgiveness of sins through penitence is evident in what Tertullian says in *De Paen.*(6) "For at this price the Lord hath determined to grant His forgiveness, by the payment of this penitence He promiseth that freedom from punishment shall be repurchased."

Underlying the ideas of Tertullian there lies the conception of God as "personalised law", which has been dishonoured by men in their criminal breaches of the law. God must be satisfied for that dishonour. In the Scholastic Theology, especially as it found full development in Anselm, the sin of man was conceived to be so great that only a God could satisfy a God, so there followed the doctrine of the Incarnation, and the vicarious sufferings of Christ. If, however, as according to Tertullian, the offence was regarded<sup>as</sup>/of such a nature that man could offer satisfaction by his own penitent act and suffering, and in his obedience in good works, there you have the germ of the Catholic doctrine of merit. In regard to the doctrine of "meritum", the idea was not original to Tertullian, but as a jurist he formulated and codified it. "He gave it a firm substance, thereby stamping the doctrine of Western Catholicism with a permanently legal character." <sup>1.</sup>

Following upon his teaching of "satisfactio" and in harmony with the usages of Roman Law it was easy for him to pass to the doctrine of "meritum". In using the word "satisfaction", he uses it as meaning a merit which avails to pay a debt. R.S. Franks in "The work of Christ" says, "the ruling conception of satisfaction is that of a merit which pays a debt." This is so, although, "the other idea of a substituted punishment is always in the background."

The relation between God and man is a legal one. God the law-giver, man the servant of the law, therefore, the fulfilment of this relation is based upon strict justice; if every

1. Franks, "History of the Doctrine of the Work of Christ" p. 105.

sin must meet with its necessary and fitting punishment, so every act of obedience must have its reward. God is the rewarder of merit. In De. Poenit 2. Tertullian says/ "Since He is the author and defender (of such things as be good) He must, therefore, needs be also the Acceptor, and if the Acceptor then also the Rewarder". "A good work hath God for a debtor, as also hath an evil one, for the judge recompenseth in every cause."

In accordance with legal analogy it is held to be possible for goodness to pass beyond what is due. In his emphasis on the free will of man, Tertullian provides a sphere of liberty in which a man may not only give strict obedience to the requirements of the law, but, if he will, he may pass into a region of superabundant goodness, which, being meritorious, must meet with a reward. Thus we have the idea of works of supererogation and accumulated merit, which bore such sinister fruit in later time.

Tertullian, in general, regards all service as meritorious, but, in a stricter sense, it was non-obligatory works which were to be specially thought of as deserving merit. "It may be pointed out that it is by no means remarkable to find that Tertullian, who was born a heathen, imported into Christian theology from an alien source - that is, from Roman Civil law, in which he had been trained, and with whose technical phrases he was quite familiar - a Roman legal term, and with it a thoroughly alien and pagan doctrine, viz. the doctrine of Salvation by works of human merit."<sup>1</sup>.

In ~~receiving~~<sup>viewing</sup> the teaching of Tertullian on the subject of "meritum" the question arises as to what is the relation of this doctrine to that of the grace of God. Undoubtedly, he fails to teach the grace of God in the sense in which St. Paul so strongly held and taught it. Tertullian, indeed, recognises

1. Morgan<sup>f</sup> Importance of Tertullian in the development of Christian Dogma." p. 45.



the grace of God, which however, does not mean the undeserved favour of God, but which is a force, not defined by him, that is stronger than nature. Grace is not opposed to merit, but to nature. "Grace operates by potentiating the free-will of man so that it becomes able to merit if it chooses."<sup>1</sup>

In tracing the history of the doctrine of merit in the words of the writers who followed Tertullian, one recognises the remarkable development of the doctrine from the conception in his legalistic mind, which development bears witness to the striking influence on the Christian Church of this juristic thinker.

#### SUMMARY.

The contribution made by Tertullian to the theology of the Christian Church is, on the whole, a remarkable one, remarkable through the terminology which he gave to theology, and also because of the dominating legal conceptions which formed its framework. To Tertullian Christianity was essentially a new law of Christ. This was true, not only in regard to the ethics of the Gospel, but to the Christian Faith itself. Everything rests upon this basis of law, law not in the sense merely of the law- New Testament usage, but with the rigid legal force of its use in the Roman Empire. To him the Christian life is strictly one under law. "Its motives, its hope of reward and fear of punishment, its ultimate issues determined purely according to legal standards." His keen, alert, active mind was that of a Roman lawyer. Weander says of him, "There is sufficient in the method of argument and controversial traits of the Ecclesiastic to enable us to recognise a trained advocate, and in the juridical cast of his language and his comparisons borrowed from the law, to find palpable evidence of his early legal studies." Moreover, he was truly a child of his age.

1. Rainy "The Ancient Catholic Church" p 138

- ~~A~~ Roman age in which law was the prevailing spirit and practice. The limitations of Tertullian's theology are largely due to this, leading, as it did, to the hardening of Theology in the mould of legalism, and forcing it into the rigid cast iron system of law.

Tertullian did not produce deliberately any carefully formulated and harmonised system of Theology. His purpose, and the object of his writings was largely polemical, hence the contradictions, paradoxes, and gaps in his teaching, which have been frequently noted.

While he must not be made responsible for some of the developments of his teaching in subsequent times, and for the vagaries and exaggerations of his doctrines in the hands of some who followed him, his germinal influence was great. He sowed the seed of ideas which attained vigorous growth, he laid down principles, and indicated lines of thought, which received fuller treatment and development in the writings of his successors. On the whole, we may confidently say, there have been few teachers who have exerted a greater influence upon the Christian Church and upon its Theology.

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C Y P R I A N.

THASCIUS CAECILIUS CYPRIANUS, Bishop of Carthage, and one of the fathers of the Church, was born probably at the beginning of the third century in North Africa, in the city of Carthage according to some authorities, where he was educated from his early childhood. He belonged to a provincial pagan family of substance, and became a teacher of rhetoric in the same city, where also, after his conversion to Christianity in the year 245,<sup>AD</sup> he was made presbyter, and later - while he was but a novitiate - bishop, and therefore the head of the whole African church. It was at Carthage also that he later died a martyr's death, namely, on September 14, 258,<sup>AD</sup> after filling the episcopal chair for ten years.

After his conversion, Cyprian gave part of his fortune to the poor, underwent severe penances, studied the Bible and early Christian writers, particularly Tertullian.

During the Decian persecution, (250)<sup>AD</sup> Cyprian was persuaded to take flight. On his return after a year's time, he found himself hemmed in by troubles. The persecution still raged, some of his clergy were bitterly hostile to him, and he fell into conflict with the bishop of Rome.

During Cyprian's absence, a schism had broken out at Carthage under Felicissimus, who had been ordained deacon by a presbyter. The Council of North Africa, called to discuss this matter, sided with Cyprian and condemned Felicissimus. Cyprian, in the midst of all his troubles, acted with great courage and single-hearted faithfulness.

He wielded a busy pen about this time. He wrote, "De Mortalitate" for the comfort of his brethren during a great plague and famine; and "De Eleemosynis" to encourage them to acts of charity; he defended Christianity and the Christians in his treatise - "Ad Demetrianum" - against the reproach of the heathens that Christians were the cause of the public

calamities.

We next happen upon the controversy concerning Heretic Baptism. Stephen, the bishop of Rome, held baptism by heretics valid if administered according to the institution either in the name of Christ or of the Holy Trinity. Cyprian, on the contrary, maintained that there was no true baptism outside the church, and regarded that of heretics as null and void. The bishop of Rome broke off communion with Cyprian and Carthage, though without excommunicating Cyprian.

A fresh persecution broke out under Valerian (256)<sup>AD</sup> and Stephen, the bishop of Rome, and his successor, Sixtus, suffered martyrdom. Cyprian encouraged his people to suffer, and wrote "De exhortatione martyrii." He was brought before the Roman consul, August 30th, 257 AD. He refused to sacrifice to pagan gods and fearlessly professed Christ. The consul banished him to Y Curubis, whence he comforted his flock and his banished clergy. Being recalled the following year, he was practically kept prisoner on his own estate, in expectation of severer measures to be brought against him and other prominent Christians.

He was imprisoned by order of the new pro-consul, Galerius Maximus, on September 13, 258 AD. On the following day, he was examined for the last time, and sentenced to die by the sword. His only answer was "Thanks be to God! "

The execution was carried out at once in an open place outside Carthage. A vast crowd followed him on his last journey. He was blindfolded by two of his clergy. He ordered twenty-five gold pieces to be given to the executioner. The body was buried by Christian hands near the scene, and churches were afterwards erected in its neighbourhood. These later were destroyed by the Vandals. Charlemagne is said to have had the bones transferred to France.

There is much doubt as to the genuineness of all the writings attributed to Cyprian. A good deal of his output took

the form of pastoral letters. To the development of the idea of the Church's unity he gave a powerful impetus, finding the unifying bond, not in the acceptance of a common standard of truth, as for instance, the Apostolic Confession then in vogue, but in the fact that the bishops were the successors of the Apostles by unbroken historic descent - the hypothesis of apostolic succession, (cf. his "De unitate ecclesiae".) Of interest are one or two quotations <sup>from</sup> ~~from~~ this work : "He can no longer have God for his Father who has not the church for his mother." ..... "He who gathereth elsewhere than in the Church scatters ~~the~~ Church of Christ." His most famous saying, "Outside the Church there is no salvation" - "Quis salus extra ecclesiam non est" - is found in Epist. l. xxii, "Ad jubanum de haereticis baptisandis." His "De oratione dominea" is an adaptation of Tertullian's "De oratione".

The most obvious characteristics of Cyprian's writings is their thoroughly rhetorical character, and their independence of Christian literary tradition. Of his dependence on Tertullian there can be no doubt, but it is entirely a dependence of matter rather than of manner. The two styles are quite distinct. Tertullian is always concise, even to obscurity. He had his own rules of art, and by them his sentences are always well shaped. He is never careless. Cyprian attains his effect by an amplitude of expression which often degenerates into verbosity, and often indulges in a sentence so prolonged and involved that its real meaning is frequently lost or obscured. Few of the words in his writings which are characteristic of Tertullian are found. The writing which approaches most to Tertullian is Ep. 63.

Cyprian's object in such treatises as "De habitu virginiam" and "De patientia" was, no doubt, to give his people the benefit of Tertullian's thoughts, while providing a substitute for writings, which, however harmless in themselves, would probably lead his readers to peruse also the Montanistic works of Tertullian, and thus lead them on to heresy. The same may be said

in connection with his writing "Ad Donatum".

Legal terms occasionally occur, but every Roman knew something about law, and nothing indicates that Cyprian had a professional knowledge. No doubt he chose the bar with a view to the study of eloquence, rather than the pursuit of law.

cf. his use of term "lex", Ep. 232, 21. "In lege justitiae." Also, "legitimus" - with meaning, not only of "lawful", but that of "appointed by law". Ep. 338. 11. "numerus legitmus et certus."

Censura is frequently used with the meaning of judicial strictness. Ep. 668, 22, also with sense of jurisdiction, or the right to judge. Ep. 189, 20.

Advocatus: is frequent Ep. 499. 18. 637. 7.

Deprecator Ep. 637. 7.

Indulgentia occurs constantly, Ep. 579. 3. 432. 14. 656, 12. 403. 5. "indulgentia criminis."

Cyprian's use of the term Sacramentum  
used of the military oath - Ep. 246 12. "sacramenti mei"  
"memor devotionis".

also Ep. 806. 4.

Of loyalty to that oath, Ep. 491 21 "quam Dei oculis."

"sacramento et devotione militis ejus acceptus."

with meaning of a bond, Ep. 754. 15.

The action of heretics on this bond Ep. 241 21, 808, 22.

As a rule or law, Ep. 600 4.

As a doctrine, Ep. 288. 1. 710 2. 713. 9.

As a type in which mysterious teaching is conveyed, Ep. 92. 6.

Ep. 337 27. 764. 8.

Often with modern meaning of sacrament. Baptism. 795 24.

Eucharist 431 17.

Cyprian uses semi-legal words to describe the appointment of clergy, i.e. constituere - ordinare - facere- (593. 8.

597. 12) 608. 8 (696.26)

Expungere a legal term is seen in Ep. 41. 587. 13. 588. 5

Redimere - legal term - 195. 24. 387 16 "redimere delicta"

deprecari 227. 10. "in <sup>pen</sup>itentia criminis .... deprecantur"

Contumaces (contumacia - refusal to answer subpoena) 248.16.

Cyprian's language in relation to sin and penitence is much the same as Tertullian's.

arbitrium liberum is used in connection with human responsibility 3. 58. 218. 16. 674. 15.

cf. Tertullian, Adv. Marc. 2. 5. "liberum et sui arbitrii  
(arbiter is a legal term for witness)

diversa pars in 600. 1.

praevaricare 213, 17, 742, 6, 759, 3 786. 13.

"praevaricatio veritatis" 592. 13. here it is lapsus.

The word "taxare" frequently used in Tertullian, cf Adv.  
Marc. 4. 20. 27.

De Praes. Haer. 6., usually in the sense of to blame, is only used in Ep. 63, one of his earliest writings, and a sign that in his earlier writings he was still under Tertullian's influence.

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A good deal of obscurity surrounds the history of the Latin father, Lactantius, otherwise known as Lucius Caecilius Firmianus Lactantius. Considering the number of writings attributed to him, and the fact that some of them are the most frequently printed among the works of the Latin Fathers, and that the attractive quality of their style has gained for their author the distinction of being called the "Christian Cicero", it is rather disappointing that our knowledge of his personal history is so extremely meagre. So scant is the evidence, external or internal, which bears on his life, that the effort to glean a few facts is often no other than a process of guess-work. Such ordinary particulars as the exact time and place of his birth and death can only be approximately arrived at. Even his traditional name is called in question. A similar uncertainty attaches to the genuineness of some of the writings ascribed to him, and to the dates on which others of undoubted genuineness saw the light.

Lactantius was probably born about the middle of the third century, for there is evidence to prove that by the year 315 A.D. he was a man well advanced in years. It was formerly an opinion among some writers that he was an Italian, and that he was born at Firmium, on the Adriatic; later opinion, however, favours Africa as the country of his birth, and this opinion is based on probably evidence, for it is known that he became a pupil of Arnobius, a teacher of Rhetoric, at Sicca in Africa. His parents were probably pagans, and not Christians, as some authorities have maintained.

Young Lactantius at Sicca made a success of his studies in Rhetoric, and in course of time established a great reputation as a teacher himself, and surpassed the fame of his former master. Jerome tells us ( De vir. ill., 587) that he was called by Diocletian to Nicomedia in Bithynia to teach rhetoric, but through lack of pupils in a Greek-speaking city, he experienced considerable



poverty, and in order to eke out his scanty means, devoted himself to literary work. Already advanced in years, the pinch of poverty probably led to his conversion to Christianity.

We next find him in Gaul, whither he had been invited by Constantine the Great to undertake the tutorship of his eldest son, Crispus. This was about ten or twelve years before his death, as some suppose, at Treves. The date of his death is variously given; it might be 325 A.D. or thereabouts.

Jerome names twelve works by Lactantius, of which seven are wholly, or almost wholly lost. Of those still in existence, *DE OFFICIO DEI* is a small treatise addressed to a former pupil, Demetrianus, a wealthy man in danger of abandoning his philosophical principles for a life of pleasure. The main purpose of the work is to fix the right relation between soul and body. He shows that God had given to man reason as a defence, and justifies the ways of providence by a description of the composition of the human body, concluding with an exposition of the soul's nature, and calls the reader's attention to another book yet to be written against pagan philosophy, apparently *DIVINARUM INSTITUTIONUM LIBRI SEPTEM*. This latter is the chief work of Lactantius. It is an introduction to true religion, and consists of seven books, designed to supersede the less complete treatises of Minucius Felix, Tertullian, and Cyprian. *INSTITUTIONES*, the title, formerly reserved for Roman legal text-books, is for the first time applied to a theological work. Incidentally, Lactantius discusses in the book the relationship of God and His Son on the basis of Roman Law, which indicates his training and profession.

- (1) The first book, *DE FALSA RELIGIONE*, combats polytheism as the basis of all errors, the unity of God being proved philosophically from the concept or idea of a supreme Being, and historically from the evidence of poets and philosophers.
- (2) In this book, *DE ORIGINE ERRORIS*, Lactantius endeavours to show that demons are the source of error.

- (3) DE FALSA SAPIENTIA demonstrates the weakness of philosophy in pretending to unattainable knowledge, and<sup>s</sup> is divided into numerous conflicting sects.
- (4) DE VERA SAPIENTIA ET RELIGIONE draws a picture of Christianity by way of contrast.

The three remaining books discuss (5) fundamental ethical conceptions; (6) the proper modes of rendering worship to God, and (7) immortality.

The work is written in exquisite Latin, but exhibits such ignorance as to justify the charge of Arian and Manichæan heresies brought against it.

The EPITOME (an abbreviated form of the INSTITUTIONES) was known to Jerome, and generally until 1712, only in a mutilated form. In 1712 it was published in full by C.M. Phaff, from a MS. discovered by Maffei at Turin. It was addressed to Patadius, possibly the brother of Lactantius. The DE IRA DEI is a treatise addressed to a certain Donatus and directed against the Epicurean philosophy.

A very famous treatise - DE MORTIBUS PERSECUTORUM - describes God's judgments on the persecutors of his church from Nero and Diocletian, and this work has formed a model for many works of a like nature down through the centuries. This book was discovered and printed by Baluze in 1679. Many critics, however, doubt the genuineness of the work, and ascribe it to an unknown Lucius Caecilius.

Jerome speaks of Lactantius as a poet, and several poems have been attributed to him, but most probably such effusions are the productions of later times.

All the known writings of Lactantius bear the marks of his rhetorical training. They are pleasant reading, and they successfully imitate the best classical models in style, and they reveal a wide range of historical and antiquarian knowledge, and citations from the poets and philosophers are very numerous.

His claims to the name of theologian are small. His embracing Christianity late in life handicapped him against an intimate knowledge of the deep things of the Christian religion. He was

practically untouched by Christology. Lactantius is not really one of the great men of the early church; nevertheless he remains an attractive personality, and his influence has been great on those who regarded him as a leader.

As previously suggested, throughout his Divine Institutes there are direct evidences of the legal training of the author. We may cite one conspicuous example.

In Roman Law there is a theory regarding the indissoluble unity existing between the paterfamilias and his heir. Lactantius in his Book IV. of the Divine Institutes makes use of this theory, to explain and illustrate Christian doctrine on the relations of the First and Second persons in the Trinity, as follows:-

" We may use an illustration which is nearer at hand. When anyone has a son to whom he is much attached, who is still a member of his household, and under the 'potestas' of his father, although the father concedes to him the name and power of a master, yet, by the civil law, the household is one, and only one is master. So this world is the one house of God, and the Son and the Father who dwell therein are one God, for the one is as two, and the two are as one."

The following legal terms are also found in his Institutes;-

Book II, Chap. 16. Sacramento - mystery of truth.

Book II. Chap. 18. "For it is a very great crime 'to devote' oneself ..... etc." "Addico" ( to adjudge) is the legal term, expressing the sentence by which the praetor gave effect to the right which he had declared to exist.

" Or 'make over' their souls to unclean spirits."

"Mancipio" implies the making over or transferring by a formal act of sale. Debtors who were unable to satisfy the demands of their creditors were made over to them, and regarded as their slaves. They were termed "addicti".

Book IV. Chap. 20. "Abdicato et exhaeredato." "Abdicati" were sons deprived of a share in their father's possessions during his life; "exhaeredati" (disinherited), those who have forfeited the right of succession after their father's death.

Book IV. Chap. 29. "In manu patris". In Roman Law the father had the power of life and death over his children.

Book VI. Chap. 7. Praevaricator = deceitful; properly an advocate who, by collusion, favours the cause of his opponent.

Book VI. Chap 12. Malitia = roguery. The word properly signifies some legal trick by which the ends of justice are frustrated, though the letter of the law is not broken.

Book VI. Chap. 25. Satisfaciat - let him make amends  
or satisfaction by fruits worthy of repentance.

Book VII. Chap. 1. Praescriptionem - objection.  
This is the Roman legal term "praescriptio".

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M A R C U S      M I N U C I U S      F E L I X.

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NO early Christian writer is so elegant in style as Minucius Felix, and none expresses so clearly and concisely the fundamental conflict between Christianity and the more serious religious thought of the ancient Roman world. He was a studious man of rare aesthetic sense. The commonplace of restless sea and sandy shore are to his poetic mind delicious novelties. Minucius is withal a man of practical and sober judgment. That he was a lawyer of repute has not been seriously questioned by any author except Dr. Salmon. (art. D.C.B.) Lactantius was probably not far from the truth when he says that Minucius held a distinguished place in his profession. He was sufficiently equipped in philosophic and aesthetic culture to have moved in the highest juridical circles of Rome. Some authorities have maintained that he was a Roman, but others, with a greater weight of evidence, have concluded that he was an African, and that he received his early education in Carthage.

Minucius was born a pagan. Several factors contributed to his conversion to the Christian faith.

He was, in the first place, much impressed by the behaviour of Christians in course of his practice in the courts. None of them ever became an informer or betrayed the slightest fear,

In the second place, the supreme courage of the martyrs filled him with admiration, ~~and~~ we may judge by the paean of praise he bestows upon them: "From the general trend of the Octavius it is evident that the simple doctrines of Christ and the blameless lives of His followers were the final means of winning Minucius to the faith, probably in the flower of his age and the maturity of his talent, as also was Tertullian."<sup>1</sup>

There is little doubt that he held a distinguished place in his profession in Rome. "One is astonished", says Dr. Baylis,

1. MINUCIUS FELIX. B<sup>7</sup><sub>7</sub> BAYLIS.

"that Minucius was able to continue in practice ~~at~~ the Roman bar at a time when Christianity was not a lawful religion. The law prescribing the oath by the genius of the Emperor in giving evidence was inflexible, and became the final test in Christian cases. Minucius, in alluding to this oath (XXIX. 5) does not admit that Christians objected to take it, but only remarks upon the extraordinary importance attached to it, as opposed to the common oath by Jupiter. His daily practice must have required an outward compliance, which doubtless was forthcoming." 2.

It is a problem difficult to solve as to the time when he lived. Bertoldi, a modern critic, has fixed the extreme limits of his life between 120<sup>AD</sup> and 180<sup>AD</sup>, supposing the dialogue to have taken place in 162<sup>AD</sup> and to have been drafted after 163<sup>AD</sup>.

Another authority, G. Kruger, suggests that Minucius did not write the Octavius until he had left the Roman bar and had returned to Africa,

Some eminent writers have made him a contemporary of Justin Martyr. Harnack thinks it was probably written between 238-249<sup>AD</sup>. Dr. Baylis is of opinion that the Octavius can have been written before 197<sup>AD</sup>, and that the cumulative evidence shows that it probably was, thus confirming the statement of Lactantius. If Baylis is right, then the proud title of "first father of the Latin Church" must be awarded to Minucius Felix and not to Tertullian. It also follows that Minucius Felix could not have borrowed from Tertullian, as most writers of the subject have maintained.

All who have read the Octavius - a literary gem of the first water - will share the regret of Lactantius that the author of such a work has left what for him is a too slight contribution to Ecclesiastical literature.

In reading the Octavius, and remembering that the author is a barrister, one is struck with the paucity of the legal terms

1. Article on Minucius Felix in the Encyclopaedia Britannica.

*This may account partly for the fact that Dr Salmon sees no proof that Minucius was a lawyer. There are, however, a few legal words and phrases*  
and phrases, e.g., "ignotus terrae filios", "filios exponere",  
"abortus", "libertatis adsertio", "locatio", "arbiter", "incerti  
querelum". "intentio", "deos municipes", "soluta legibus fortuna",  
'eradere."

But apart from a few legal words and the general set up and management of the Octavius, as if from the pen of an advocate, and the juridical character of his mind so clearly shown in his own part in the dialogue in Chapter XLV. there is nothing really juristic about the Octavius.

"The Octavius is a dialogue on Christianity between the pagan Caecilius Natalis and the Christian Octavius Januarius, a provincial solicitor, the friend and fellow-student of the author. The scene is graphically and pleasantly laid on the beach at Ostia on a holiday afternoon, and the discussion is represented as arising out of the homage paid by Caecilius, in passing, to the image of Serapis. His arguments for paganism, which proceed partly upon agnostic grounds, partly upon the inexpediency of disturbing long-established religions, partly upon the known want of culture in Christians, the alleged indecency of their worship, and the inherent absurdity of their doctrines, are taken up seriatim by Octavius, with the result that the assailant is convinced, postponing, however, the discussion of some things necessary for perfect instruction to a future occasion. If the doctrines of the Divine unity, the resurrection and future rewards and punishments be left out of account, the work has less the character of an exposition of Christianity than of a philosophical and ethical polemic against the absurdities of crass polytheism. Christology and the other metaphysics of distinctively Christian theology are entirely passed over, and the canonical scriptures are not quoted, hardly even alluded to."<sup>1</sup>.

1. Article on Minucius Felix in the Encyclopaedia Britannica.

LEGAL TERMS IN MINUCIUS FELIX.

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Ignotos terrae filios

Filios Exponere

Abortus

Libertatis adsertio

Locatio

Arbiter

Incerti querelam

Intentio

Deos municipe

Soluta Legibus fortuna

Eradere



THE INFLUENCE OF ROMAN LAW  
ON CHRISTIAN DOCTRINE.

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All sound and legitimate doctrinal construction must be based on experience, since experience and doctrine are closely related to one another. And of the two, experience takes the precedence. As a rule, doctrine is an effort to give a rational and intellectual expression to truths that lie embedded in Christian experience. But doctrine also reacts on experience itself, and has a tendency to change the expression and to form it on its own image and pattern. If experience has a tendency to create doctrine, so has doctrine a tendency to create an experience in harmony with itself. It is generally agreed that the richest expression of Christian experience in its purity and power is to be found in the New Testament. But in order to do justice to the subject it would be necessary for us to trace the Christian experience through the centuries in its development and declension, for Christian experience is not something static, uniform, fixed, more than anything else that pertains to human life on earth, but is something gradual and progressive. It is not an easy task to give a concise description of early Christian experience for the reason that there is a great variety, even within the confines of the New Testament itself. It is not one uniform standard type that we find there. Indeed we may say that there are five or six types as represented in the synoptic gospels, in the Epistles of James, Peter, Paul, the Epistle to the Hebrews, and the Gospel of St. John. These types differ much from one another, not only as to forms of expression, but in ways more fundamental. It is however, possible to over emphasise the difference between them. Under the variety, there is a unity of life and spirit. It is quite true that we cannot feel too confident that the Christian experience that is embodied in the New Testament represents the experience of the average Christian of the first century. It is more than probable that the majority at least among the Jewish Christians resembled the somewhat impoverished and bald type represented in the Epistle of James.

But the average type is not of necessity the characteristic type. The Christian consciousness must be studied on its highest and not on its poorest level, if we are to rightly estimate what is truly distinctive and creative in the Christianity of the early church, if we are to discover the secret of its victorious strength. We must therefore make abundant use of the Epistles of Paul and the gospel of John, while we acknowledge that these bear the unmistakable marks of the creative genius of their authors, as well as their testimony to the common faith. Neither should we on any account disregard the testimony of the Synoptic gospels, and the early chapters of the Acts, for they also faithfully reflect the characteristics of the early Christian life, though their doctrine of Christ is characterised by more simplicity. It is necessary for us to enquire what is the essential difference between the Christian experience and the Jewish religious experience of the same period. In other words, what difference did Christ make? No doubt He in some ways transformed the values of life. Though the new religion was in a true sense a continuation and a development of the old, Christ made a difference that was nothing less than revolutionary. We find two elements in the consciousness of the early Church of Christ - two elements that are closely related to one another, and yet to be distinguished from one another, viz., the historic Christ, and the living exalted Christ. The former is given to us in the gospels, the latter in the Acts and the Epistles. The resurrection of Christ made a great difference to the early disciples. Christ now came to them to represent the same spiritual values as God, so that we may say that the distinguishing characteristics of Christian experience in the New Testament is a deep consciousness of the Lordship of Jesus Christ. Probably the first creed of the Church was "I believe in Jesus Christ the Lord." Thus the earliest creed emerged out of a dominant consciousness of the Lordship of Jesus Christ. Strange conceptions have been entertained by some people as to the formation of Christian doctrine. They cannot believe that it has been a gradual process, and that it is the result and expression

of Christian experience. They think that the entire edifice of Christian theology, descended from above, ready-built, like the New Jerusalem in St. John's vision; that the Christian faith was not born like its founder, a babe in a manger, but rather like fabled heathen deities, adult and panoplied; that bodies of Divinity are coeval with Christianity itself. According to another view, the formation of Christian doctrine was somewhat similar to the formation of man - the outward frame, fashioned of earthly elements, but the inner an informing spirit, divine.

Our systems of divinity are nothing other than a compilation of the theories of devout thinkers in successive generations - men who, however divinely guided and directed, could only use the materials they had at hand, who were limited by the range of contemporary language and ideas, and who gave utterance to their conceptions of religious truth in terms of the philosophy of their own time.

If this be the correct interpretation of the formation of Christian doctrine, it is evident that a study of the intellectual environment of the writers of the New Testament, and of the early Church Fathers, is essential to a comprehension of the development of Christian theology. We may, perhaps, classify the categories through which Christian doctrine has been expressed, in the following way:-

- (1) Those that have emanated from the Jewish mind before Christ.
- (2) Those that issued from Greek and Hellenistic philosophy;
- (3) Those categories, partly metaphysical, partly legal which belonged to the Old Latin World and the Middle Ages.

(1) Christianity was born in a Hebrew atmosphere and environment, but early in its history it was translated from the narrow realm of Judaism to the spacious Graeco-Roman world. The church very early outgrew the Jewish categories and terminology ( e.g., the term Messiah) through which the early Christians gave expression to their faith in Christ, and proceeded straightway to translate them to thought-forms that would be intelligible to the cultured

people of the Graeco-Roman World. For example, it would have been fruitless work to try to present to the Gentile world the claims of Jesus Christ in terms of the Messianic idea, or the Kingdom of God in the Jewish sense, whether according to the interpretation of the Old Testament prophets, or of the later Apocalyptic writers. Such categories would have been meaningless to the Gentiles. Consequently, we discover ~~even~~ even in the New Testament itself, the work of translating and interpreting doctrines in harmony with their new environment.

(2) The first and greatest influence that moulded early Christian doctrine was Greek culture. We can trace that to some degree in the New Testament, but there it is subject and subordinate to the Hebrew spirit. Soon, however, the relation changed, and we find the Hebrew element subject to the Greek spirit.

According to Harnack in his History of Dogma, and Hatch in his Hibbert lecture, Greek philosophy left the deepest impression on Christianity in the second and third centuries. The works of Justin Martyr, Clement of Alexandria, and Origen, show how deeply Greek categories influenced early Christian doctrine.

But it has been maintained that Greek philosophy was the only force that influenced the crystallisation of religious belief into definite dogmatic form.

"Greek metaphysical literature", writes Maine, "contained the sole stock of words and ideas out of which the human mind could provide itself with the means of engaging in the profound controversies as to the Divine Persons, the Divine Substance, and the Divine Nature<sup>1</sup>. The Latin language was quite unequal to the task."

"Latin Christianity", writes Milman, "accepted the creed which its narrow and barren vocabulary could hardly express in adequate terms."<sup>2</sup>

We are inclined to think that both Maine and Milman give a very incomplete and one-sided view of the subject. Renan seems nearer to the truth when he says, "There is a sense in which in point of time Rome comes first. It is only in the earlier parts of the

third century that the Greek mind in the persons of Clement of

1. Maine. "Ancient Law" p 355  
2. Milman. "Latin Christianity" preface to Vol. I. -218

Alexandria ~~and~~ Origen really laid hold of Christianity." 3./

(3) There can be no doubt that even in the ante-Nicene period, Roman law exerted a very powerful influence upon Christian controversy, and that as early as the second century, the influence of Roman law impressed itself concurrently with that of Greek philosophy upon Christian thought. Both had their share in shaping and settling those intellectual conflicts, which ended with the formation of the Nicene and Athanasian creeds.

The deficiencies of the Latin language as a medium for shaping the doctrines and settling the controversies of the early Church <sup>we</sup> has been greatly exaggerated. Sir Henry Maine, we think, has over-emphasised the insufficiency of the Western mind for metaphysical enquiry, and the insufficiency of the Eastern mind for the study of Civil Law. It is quite true that the Latin race had a genius for law, and the Greek race for metaphysics; but the premium on the study of jurisprudence was so enormous that there were schools of law in every part of the Empire.

Again, in estimating the comparative influence of Greek philosophy and Roman law during the early centuries of the Christian era, there is one fact that we must bear in mind, viz., that Greek philosophy was a dead philosophy, whereas Roman law was a living science. This science from the commencement of the Empire was in a state of active development, and it reached the highest point of supremacy in the period between 120 A.D. and 220 A.D. It was during this period that the greatest jurists lived, Papinian, Gaius, Ulpian, Paul, Modestinus. They were the great lights of jurisprudence for all time. As Dr. W.E. Ball points out, the influence exerted by these great jurists upon succeeding ages in many departments of thought is unquestioned. Indeed it is remarkable to note the variety of sciences to which Roman law has contributed modes of thought, courses of reasoning, and a technical language.

~~(1) Maine's Ancient Law. p. 355.~~

~~(2) Latin Christianity Preface to vol. 1.~~

(3) Vide Hibbert Lecture 1880.

It may safely be said that there is no intellectual pursuit with the exception of Physics and Metaphysics, which has not been affected <sup>by</sup> ~~through~~ Roman jurisprudence. Politics and moral philosophy found in Roman law not only a vehicle of expression, but a nidus in which some of their profoundest inquiries were nourished into maturity. To account for this phenomenon, it is not absolutely necessary to discuss the mysterious relation between words and ideas, or to explain how it is that the human mind has never grappled with any subject of thought unless it has been provided beforehand with a proper store of language, and with an apparatus of appropriate logical methods. It is enough to remark here that when the philosophical interests of the Eastern and Western worlds were separated, the founders of Western thought belonged to a society which spoke Latin and reflected in Latin. But in the Western provinces the only language which retained sufficient precision for philosophical purpose was the language of Roman law. And if Roman jurisprudence supplied the only means of exactness in speech, still more emphatically did it furnish the only means of exactness, subtlety, or depth in thought. We are in this thesis concerned with the influence of Roman law on the formation of early Christian doctrine. Has jurisprudence ever made itself felt in Theology? The point of inquiry which is here suggested has never been satisfactorily elucidated. What has to be determined is, whether jurisprudence has ever served as the medium through which theological principles have been viewed, whether, by supplying a peculiar language, and a peculiar mode of reasoning, it has ever opened new channels in which theological speculation could flow and expand itself. For the purpose of giving an answer it is necessary to recollect what the best writers have agreed upon as to the intellectual food which theology first assimilated. We are of opinion that next to Greek philosophy, it was Roman law. There is no doubt that the language and methods of jurisprudence were used for the expression and expansion of theological thought. While this process went on, it was inevitable that jurisprudence, though merely intended to be the vehicle of

thought, should communicate its colour to the thought itself. The influence exerted by the great jurists upon succeeding ages in many departments of thought is unquestioned. Is it possible that they exerted none upon the Christian controversies of the early centuries? Is it possible that none of their genius for classification and definition was at the service of the church at the very period when theological dogma was in process of formation? Had the passion of the jurists for precision and completeness no share in the formation of the Nicene and Athanasian Creeds? It would indeed be very strange, had there been no such influence. But such influence was there. Before the close of the second century, and whilst Roman jurisprudence was still at the height of its intellectual activity, law and theology met in the person of Tertullian ( Cf Dr. W.E. Ball.)

Christianity travelled from the East to the West, and though for the first two centuries, it was still under the influence of Greek thought and the Greek tongue, the characteristics of the Roman spirit forbade that it should for a lengthened period be ruled by the influence of Greece. The philosophy which was reflected in the theology of the East, was represented in the West by the legal genius of the Roman Empire; and it is not to be denied that a powerful stamp has been given to modern Christianity by the mould of Roman law in which so many of its conceptions were cast. Without the aid and the influence of this law, it is probable that the Latin races and the Western people would have, in a great measure, failed to receive and assimilate the profound conceptions and truths of the Gospel.

"The intellectual and speculative Eastern mind seized upon subtle metaphysical points, while the Western genius turned to practical questions of law and system, and how man in his transgressions can become just with God." (1)

(1) "Greek Philosophy and Roman Law in the New Testament"  
by Dr. Hicks. p. 149.



That there is a broad contrast between Greek and Latin, or more generally, between Eastern and Western Christianity, is a familiar fact, and the general character of the contrast is also familiar. It has been expressed in a variety of ways, which all mean the same thing. Western Christianity has been described as being more realistic, more Biblical, more practical, more ecclesiastical, and less speculative than Eastern. Its theology is less metaphysical, and more psychological. In one word, it is more experimental. Sir Henry Maine considers that the chief factor that accounts for this difference is the introduction of Roman law into the theology of the Western church.

It is for us now to consider what effect the copious, malleable terminology of Roman law had upon the formation of Early Christian doctrine. When, however, we come to seek for specific indications of Roman law in theology, we are not to look so much for isolated expressions and instances as certain broad features. There is no doubt that Roman law affected

- (1) The doctrine of God.
- (2) The doctrine of the Trinity.
- (3) The doctrine of the Atonement and Sin.
- ~~(4)~~-

- (1) The doctrine of God.

Several of the Early Fathers had received legal training with the result that many found themselves peculiarly at home among juristic categories, and they were possessed from the first with a strong impulse and tendency to carry religion into the legal sphere. The Deity was thought of as a judge, and their terminology was that of a court of justice. There is a certain hardness and severity in their conception of God, and that man's relationship to Him is not a filial, but a legal one. They did not realise the Fatherhood of God, that the essence of His character was love, and that man's relationship to Him was a moral one. This legal conception of God cannot satisfy our moral consciousness at its best. No doubt their purpose was a noble one, viz. to safeguard the righteousness of God and the moral order of the world. It would be well for us also to remember that the relations

of man to God are personal, but they must be determined on universal principles; in other words, they must be determined by law. It is absurd to object to this, that there can be no interposition of a Statute book between the Father and His child. No one wishes to conceived of the relations of God and man as determined by statute. We know that they are not determined in this way. But even if in the light of the Christian revelation we describe the Divine and the human personality as Father and child, we do not eliminate from their relation that universal element which we call law. Law pervades all the relations of the Father and the children in the family of God, though not in statutory or legal forms. The family exists in a world of universal moral necessities, and by these all the relations of its members are determined throughout. God is both Father and Judge, and it is the Father that judges.

## 2. The Doctrine of the Trinity:

It is a convention of some theologians to ignore the fact that there ~~ever~~ was a time when even the most abstruse of Christian doctrines was in process of formation. It is customary to apply to the opinions of the ante-Nicene fathers a test of orthodoxy which did not exist in their day. They are judged by the Nicene and Athanasian creeds which they themselves helped to frame. The word ~~the~~ Trinity~~s~~ was coined by Tertullian. In dealing with the doctrine of the Trinity he uses not philosophical, but juristic terminology. His Trinity was a legal, political, economic Trinity and not a metaphysical or essential one. Two legal conceptions must be borne in mind in order to understand the original significance of the Doctrine of the Trinity, viz. substantia and persona.

Substance (Substantia) signifies in the language of the jurists not anything personal, but rather corresponds to property, in the sense of a possession; or to the essence, as distinguished from the manifestation or status. Persona, again, is not in itself anything substantial; it is the subject, or individual as capable

of entering into legal relations and possessing property, who can quite well possess different substantia, just as, on the other hand, it is possible for one substance to be in possession of several persons. To a jurist, the difference between "persona" and "substantia" were self-evident. God, then, is one and regarded as a substance. Since God is a substance, He is capable of distribution or division; God has communicated of His substance to the Son and Spirit, who, together with the Father, constitute the "tres personae".

"Persona" is also a legal term denoting the party or name to a suit. The "personae" differ, "gradu", "forma", "specie", and they agree "statu", "substantia", "potestate". These terms are juridical and synonymous. The "personae" are distinguished, but the "substantia" is not divided; a state of things quite clear to one who thought as a Roman lawyer. Tertullian, in so far as he designated Father, Son and Holy Spirit as one substance, expressed their unity as strongly as possible. The only idea intelligible to the majority was a juristic and political notion, namely, that the Father, who is the "total substantia" sends forth officials, whom he entrusts with the administration of the Monarchy. The legal fiction, associated with the concept "persona" helped the matter here. The "Personae" are looked upon as "officials", the agents of an administration. The God-head is a Monarchy; and monarchy signifies nothing else than "Singulare et unicum imperium", but the authority does not cease to be one by having more than one Minister, and so Tertullian speaking like a Roman jurist, decides the "filius et spiritus", as "consortes substantiae patris", with whom the Father speaks, as with servants and eye witnesses, in accordance with the unity of the Trinity. (1) For this purpose they were created, for Son and Spirit alike owe their being to the Father. Tertullian further illustrates the conjunction of the three persons by the simile of the root, the shrub, and the fruit; their inseparability by that of the fountain, the stream and the river; their coherence by the image of

the sun, the ray, and the terminating point of the ray.

Tertullian's treatment of the subordination of the Son is characteristically juristic. The Son is said to do nothing without the Father's will. But it is to be understood that the Son exercises freely a delegated Divine power, as a minister to a superior.

The Father is not prevented by the fact that He is sole ruler from administering His own monarchy, through whatever agents he chooses.

"I contend", says Tertullian, "that no Dominion so entirely belongs to one only, as not also to be administered through other persons, closely connected with it, and whom it has provided as officials."<sup>(2)</sup>

In these words he has no doubt in his thought, the administration of the Roman Empire. The terms are "personae", and "officiales". Perhaps Roman Law has affected the doctrine of the Trinity more than any other doctrine, so we will deal with it at greater length.

#### The Influence of Roman law on the doctrine of the Trinity:

The first Christians were monotheists, some of them from instinct and tradition, others from enlightened conviction. On the other hand their knowledge and experience of God came to them (1) through Jesus Christ, i.e. God revealing Himself objectively through and in an historical person; (2) through the Holy Spirit i.e. God revealing Himself inwardly through a continuous *indwelling*.

The intellectual problem was bound to arise, how it was possible to harmonise the essential unity of God and His various self-revelations, particularly with the belief that He was both Father and Son.

The Church was for centuries seeking a doctrinal formula that would overcome the difficulty by taking a middle course between heresy on the right hand and heresy on the left. It was not an easy matter to steer the ship between the rock of Tritheism on the one hand and the rock of Socinianism, or Arianism on the other,

(2) Adv. Prax. 3.

without making a shipwreck of the faith. The Church had to define its creed, in the first place, against the attacks of the enlightened heathen around it, and secondly, against the false teaching of those within its own pale.

For centuries the Church had no uniform, complete, special doctrine to meet the difficulties that presented themselves to her. Necessity is the mother of invention. The Early Church Fathers set themselves to make experiments, as it were, and to formulate and define their creed, by making use of the best categories that were at their disposal, especially Greek and Roman categories.

Even those early theologians who were quite orthodox in their spirit and purpose, were considered heterodox when judged by later standards, particularly on two points. In the first place, they were not quite clear that the Eternal Logos was more than an impersonal attribute in the Godhead, before He became a person or a Son, to be the Mediator in the creation of the world. Justin Martyr and Tertullian taught that the Son, as a personal Son, did not pre-exist from eternity with the Father, but that He came into existence before the creation of the world. That doctrine was condemned later as Arian heresy.

In the second place, they did not clearly and consistently differentiate between the Logos and the Holy Spirit. They often attributed to the Logos all the mediatorial work between God and His creation, so that there was no room for the Spirit, except as another name for the Logos. Nevertheless, they revered tradition, and clung formally to the Baptismal formula and the Church custom of referring to the Spirit as a third person.

This is true of <sup>a</sup>Hermes, Justin Martyr, and Clement of Alexandria. Even Tertullian, a dogmatic Trinitarian, does not always succeed in clearly differentiating between the offices of the Logos and the Spirit. A goodly number of the leading modern theologians make the Holy Spirit simply the Spirit of Christ, or the Spirit of God, and base their conclusions on Scripture.

If we trace the history and development of the doctrine of the Trinity, we can discern seven milestones on the Church's journey towards the standard definition "one essence (or substance) in three persons. (una substantia, tres personae.)"

- (1) The teaching of the Apologists of the second century - their work of unifying the pre-existent Christ and the Logos of Greek philosophy.
- (2) The teaching of Origen concerning the eternal generation of the Son.
- (3) In the council of Nicea 325 *A.D.* the Church by the use of the word homoousion declared against the Arian heresy.
- (4) Fifty years after the council of Nicea, the Church declared against Macedonius, that the Holy Spirit was homoousion with the Father.
- (5) The final form was given to the doctrine of the Trinity in the East by the "Cappadocians", as they were called, viz., Basil and the two Gregory's, towards the end of the fourth century. They systematized the tendency of the central teaching of the Church till now, and fixed the terminology of the doctrine, crystalising all in the formula, one essence (*οὐσία*) in three persons (hypostasis) (una substantia, tres personae.)

The difference can now be clearly seen between *ousia* and hypostasis. Previous to this these terms had practically the same significance, and they were used as synonymous in the creed of Nicea. Both terms signify the true essence or substance of a thing - in Latin *essentia* or *substantia*. But the Cappadocians made an artificial difference between them that did not really inhere in the words, in order to meet the difficulties of the problem of the Trinity, using the terminology "*ousia*" to signify the Divine essence that was common to the three persons, and the term "*hypostasis*"

for the element that differentiated every one of the three persons from the other two.

In Latin they came to use the term "persona" as a translation of the Greek "hypostasis," and the word was translated into English as "person". But we must clearly understand that one word "person" does not signify the same thing as the Greek "hypostasis" or the Latin "persona" in the formula "one essence, three persons."

The Cappadocians taught that God was one in point of essence, but three substances or persons. They differentiated thus between the three.

The Father unbegotten i.e. with His essence in Himself, receiving His existence from Himself alone; the Son, and the Spirit receiving their essence eternally from the Father, the former by generation, the latter by procession.

(6) We should further note the difference between the orthodoxy of the East and the West. In the theology of the East there exists a strong element of inferiority in the doctrine concerning the Son and the Spirit.

There is assigned to the Father as the ultimate fount and source of the God-head, a superior position, while the Son and the Spirit receive their existence from the Father. Therefore, the position of the Son and the Spirit within the God-head is lower than that of the Father. That is the way adopted by the Eastern theologians to safeguard the unity of the God-head, viz. by showing that the Three had one source. But the Western theologians, mainly through the influence of Augustine, rejected the idea of inferiority, and assigned equality in all things to the Three persons.

(7) All this is summed up in the great creed of the Western Church, improperly called "The Athanasian Creed" (it shows more of the influence of Augustine than Athanasius). Until now, in the greater part of the Christian world, the Nicean and the Athanasian creeds were looked upon as the last word on the doctrine of the Trinity. In these creeds we have not simply three aspects or three modes of the Divine revelation to the world, but an essential or

ontological Trinity, i.e. the three essential modes of the inward, eternal, existence of God.

Behind the revealed Trinity, is the essential Trinity.

The distinctions in the God-head are essential distinctions (hypostaseis) inward, eternal, necessary.

The formula, una substantia, tres personae.

(One essence, three persons.)  
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It is necessary to bear in mind that the terms "essence" and "person" are technical terms borrowed from Greek philosophy and Roman law respectively, and they have changed so much of their meaning during the centuries, that they are to us now quite misleading.

The Greek word "hypostasis" which is translated "person," at first simply meant "substance", and to all intents and purposes bearing the same significance as the word that is translated "essence", and so the formula stood for "one essence, three essences". But by using two different words for "essence" emphasis was laid on the point that God was not one in the same sense as He was Three. This idea was safeguarded that He was of one essence (οὐσία) but three substances (hypostaseis).

The Three were called "substances" in order to teach that the distinctions in the God-head were substantial, eternal, and necessary, and not temporal or accidental modes of existence as the Sabellians taught. But certainly it was not intended by the early Church that "three persons" should convey the meaning we attach to the term, viz. three beings having a separate will and self-consciousness, acting independently of one another.

The Latin theologians translated the word "hypostasis" by "persona" and our word "person" has come from the Latin tongue.

Neither did the word "persona" mean the same thing as our word  
viz.  
"person" in the centre of self-consciousness and self control.

The word first signified "a mask", then the part assigned to an actor in a drama, and afterwards the part a man takes in a legal action - his status and rights in the sight of the law.



In Roman civil law "persona" signified three things, viz. freedom, citizenship, and family rights. According to that law, neither a slave nor a woman were persons, since they had no legal status or rights whatever. It is now quite clear to us that the word "persona" had a thorough legal colouring when it was taken over by the theologians as a translation of the Greek word "hypostasis", and it had nothing to do with the moral or spiritual idea of personality. But in the popular idea of the word, even in orthodox circles, the term "three persons" came to signify something like three centres of self-consciousness in the Trinity - three minds - three actors - three Divine "Egos" within the one essence. Indeed they almost came to be thought of as three individuals, able to hold fellowship with one another, as the Father and the Son are portrayed by Milton in "Paradise Lost". Oftentimes the Father and the Son were described as if they represented different types of character - the Father standing for inflexible righteousness and vengeful wrath, the Son representing love and sacrifice, the Father demanding an Atonement for man's sin, and the Son making the payment, thus reducing man's redemption to a kind of bargaining transaction. It is no wonder that Dr. Garvie in his book "The Christian doctrine of the Godhead" (p. 476) should definitely assert that the word "person" in the doctrine of the Trinity should be thrown overboard, because of its misleading and harmful character. Indeed, Augustine himself, made an apology for using the word and added that poverty of language alone compelled us to use it, in the absence of a better. (1)

The leading theologians were always careful to emphasise this point, lest we might arrogate to the term "three persons", the idea of three separate individuals, in the sense, say, that Peter, James, and John were three.

Let us further consider in detail this formula, "one essence, three persons."

(1) Augustine De Trinitate. C.V.

(1) One essence: This part of the formula stands for the all important truth of the unity of the Godhead. To believe that God is one, is essential as a foundation for the unity of man's experience in life and religion. It also stands for the reality of the Christian experience that God Himself and nothing less acts objectively in the historic person, Jesus Christ, and subjectively in the spirit's indwelling presence in our hearts. It was this, indeed, that compelled Athanasius to fight like a giant against the Arian heresy, and in behalf of the formula of Nicea, that the Son was of the same essence as the Father. He was fighting for a fact that was attested in the experience of believers that it was God Himself who was "in Christ, reconciling the ~~world~~ world unto Himself". But the term "essence" in our day, scarcely worthily portrays the Divine nature, nor does it do justice to the revelation of God in Christ. Instead of using the words "essence" or "substance" it is better to follow in the wake of the New Testament and the personal experience of believers, and think of God in terms of His moral attributes as they are revealed in His human activities, and, specially in Jesus Christ, as holy love. Let "love" be substituted for "essence" or "substance", and God will become a living, personal, active being, and not someone static, sheltering, as it were, behind His own attributes. In a word, God is character, and His unity is the unity of character.

(2.) Three persons: This part of the formula stands for the wealthy variety of the Divine life. God is not naked unity. There is nothing more poverty stricken and fruitless than simple, pure unity. The great principle of the Universe is unity in variety, and it must needs be that that principle has been founded on the inner life of God Himself. Since God is the ultimate source and fountain of all things, He must contain within Himself the foundation of all the possible and endless variety of the Universe and life. But why is God's inner and varied life confined to three?

We see no reason on logical grounds why it should be confined to three, any more than we can confine the multiplicity of Nature's phenomena to three.

Many attempts have been made to justify the number three on logical grounds, or at any rate, on the principle of analogy. These analogies were often the fruit of fanciful and arbitrary curiosity, such as when some of the Church Fathers saw in the sun a symbol of the Trinity, viz., the sun itself, its light, and its heat, representing respectively, Father, Son, and Holy Ghost. Or the trinity in the rose, according to Luther, viz., its form, colour, and radiance.

There is more to be said in favour of Augustine's psychological analogies, e.g., when he makes the memory, the understanding, and the will, to compose the unity of man's mind. (1) Or when he refers in another place in the same book to the mind itself, its knowledge, its love, and these three one substance,<sup>2</sup> or yet in another place when he refers to love as embracing (1) the one who loves; (2) the object loved; (3) the love itself. (3)

But these analogies do not, somehow, convince us that the number three, and not more or less, is essential and necessary. It would be quite as easy to discover analogies in favour of the number 2, or 5, or 7, or any number that one may arbitrarily choose. The number 7 is the perfect number, and an able but eccentric Welshman wrote a book to prove that there were seven persons in the Godhead.

Hegel's trinity is much more philosophical, according to his well-known triple formula, viz., thesis, antithesis, synthesis. Hegel thinks of the Absolute in three modes, namely, as (1) Pure subject; (2) God going out of Himself to be, as it were, an object to Himself (and that is the significance of the Universe - God an object to Himself) (3) God returning to Himself in a perfect and all-comprehensive unity.

1. De Trinitate X. 11.

2. De Trinitate IX. 12.

3. De Trinitate IX. 2.

There is, however, only a distant relationship between Hegel's metaphysical Trinity and the Trinity of Church dogma, though Hegel himself thought they were the same in reality.

(3) Juristic views of the Atonement and Sin.

The doctrine of the Atonement is a deep and profound mystery, and the minds of the greatest and devoutest theologians have pondered over it throughout the centuries with a view of interpreting it and arriving at a correct theory concerning its significance. Among others, there is a forensic or juristic view of the Atonement. The early Fathers who had received legal training found themselves peculiarly at home among juristic categories, and it is quite natural that they should propound a legal theory of the Atonement. The views of the subject may be roughly classified as follows:

- (a) Reconciliation. (b) Ransom. (c) Propitiation.
- (d) Satisfaction.

These are New Testament terms. Several legal terms have been borrowed to explain theories of sin and Atonement e.g. "satisfactio", "meritum", and these terms are peculiar to Western theology - they have no counterpart in Eastern theology. One of the theories, which engaged the attention of the early Fathers, was the idea of Ransom. According to the theory, the purpose of the death of Christ was to pay a ransom to Satan for the life of man. This is called the "Doctrine of Redemption from the Devil", which, no doubt, has a juristic basis. While some of the early Fathers held to the idea of redemption as a rescue, either by force or even by fraud, others looked upon it as dealing with rights which had been acquired by Satan on the recognised principle of "the law of possession." From whom could Christ ransom men? Certainly not from God. It must be therefore from Satan; and they proceeded to develop the idea with a fulness of detail derived from legal affairs.

(4) Irenaeus.

According to Irenaeus the object of the death of Christ

is to convert men by persuasion to return from their apostasy from God. The influence of the death of Christ is exerted over mankind and not over Satan, yet the reason for proceeding by the method of moral persuasion is said to be, that it became God to redeem His own from the Evil One, not forcibly as Satan acted in the beginning, but by moral suasion. The Devil had carried off by force the human race from the Kingdom of God to his own apostasy; but it became God to win us back from the tyranny of Satan, justly, in conformity with His own righteousness.<sup>1</sup>.

Some critics maintain that the persuasion spoken of refers to Satan, who was to be induced, by the death of Christ, freely to release mankind; but the words will not sustain that interpretation. Irenaeus is contrasting the methods of procedure, namely, that Satan used force, and God uses moral suasion. Although however, there is here no suggestion of payment to Satan, yet at the same time, there is a recognition of certain rights of possession, which may be interpreted as legal rights according to the law of possession, and these must not be violently invaded or infringed.

The human race, however, does not belong to Satan, therefore, if it freely chooses to break away from him, it will be in conformity with righteousness that God should receive it back, but not that God should descend to the same level with Satan and seize for Himself what Satan by force had taken possession of. Irenaeus's "Doctrine of Recapitulation" (Recapitulans) is certainly suggested by legal ideas in combination with certain statements of St. Paul. In Book V. chapter 23, he says "Our Lord summing up universal man in himself from the beginning even to the end, summed up also his death."

The solidarity which this statement expresses is an important part of any adequate working theory of the Atonement.

The federal or representative conception which is at the basis

of it raises questions for which a legal answer is more easily found than an ethical one, and his doctrine of a ransom<sup>y</sup> paid for mankind to Satan, though not so extravagant as it became in other hands, has a juristic colouring.

### Tertullian,

And, adding another name, Augustine, are the fathers of the Latin Church. These two men have left their mark so deeply on the Western Church, that it can almost be said that the East possessed no Church Fathers at all. Of these two men, Tertullian claims precedence. He was the first to turn the currents of Christian thought in the West into channels in which they have never since ceased to flow. He was the first Latin Churchman whose genius helped to shape Latin Christianity. He not only transferred the technical terms of the jurist into the ecclesiastical language of the West, but he contemplated from a legal standpoint all the relations both of the individual and of the Church, to the Deity, and reciprocally, His relation to them. It is strange that Tertullian has made no contribution on the doctrine of the Atonement, but he has systematised his legal view of the relation of the Christian to God by the use of important terms such as "meritum" and "satisfactio", both of which, together with their cognates, are common in Roman jurisprudence. In addition to these terms he also uses "Culpa", "Reatus", "Crimen", "Delictum", etc. In fact, the language of "De-Poenitentia", Chaps. 2 & 3. is almost exclusively legal in tone, but the terms "Meritum" and "Satisfactio" are the most prominent.

In meeting the docetic opinions of Marcion, Tertullian puts Christ's death with decisive emphasis into its true place. If Marcion was right, he says, "God's entire work is subverted. Christ's death, wherein lies the whole weight and fruit of the Christian name, is denied; though the apostle asserts it expressly as undoubtedly real, making it the very foundation of

the Gospel of our salvation, and his own preaching.<sup>1.</sup>

In spite of this, however, Tertullian has no full interpretation of the death of Christ. The Grace of God comes to man in or through it, but he does not directly explain how. Even in connection with baptism, in which all the previous sins of the baptised are cancelled, he does not lay stress on grace, but on the penitence by which the bestowal of grace is conditioned. Tertullian, being a lawyer, it was natural for him not only to make large use of the vocabulary of his profession - which he could do in the way of allusion or illustration - but to be largely influenced by its ruling categories. It is more owing to him than to anyone that the relations of God and man came to be regarded as legal relations, and sin, for example, as a kind of legal liability which might be dealt with in ways analogous to those with which his profession had made him familiar. This may be an inadequate way of conceiving of sin, but it has the advantage of being definite and specific.

The legal terms "satisfactio" and "satisfacere" are not applied by Tertullian to the work of Christ in relation to sin.<sup>2.</sup> He is not conceived as making satisfaction to God in any sense whatever; to make satisfaction is the work of the sinner himself. Cyprian, however, does apply the term "satisfacere Deo" to Christ. Satisfaction in the strictly legal sense of the term, is identical with punishment. The man who has broken a law makes satisfaction by enduring the penalty which is attached by the law to his offence. But the "Satisfaction" which is made by a Christian when, after post-baptismal sin, he is reconciled to the Church is not the acceptance of his sin's penalty. At the most the satisfaction is quasi-penal; it is something which is taken by God as a ground for annulling the real penalty; in Tertullian's own words, the penitent sinner, who makes satisfaction for his sin <sup>"Temporalibus"</sup> ~~"Temporalibus"~~ afflictationibus <sup>et</sup> ~~et~~ aeternis supplicia non dicam frustretur sed expungat"<sup>3.</sup>

The formula "Satisfacere deo" was bound to come, and for better or worse it did come, implying that Christ by His death - in which is concentrated "The whole weight and fruit of the Christian"<sup>name</sup> made

1. Adv. Marcionem 3. 8.      3. De Poenitentia 9.  
2. De Poenitentia 9.

satisfaction for sins. But the original ambiguity of satisfactio and Satisfacere clung to the term. Some rendered it rigorously in the legal sense, and then to make satisfaction was the same thing as to pay the penalty, which in this case was eternal death. Others, in accordance with the facts involved in the sinner's satisfaction for his own sin, could only regard the satisfaction of Christ as improperly or quasi-penal. It was far more adequate than anything the sinner could offer to God - it was adequate to satisfy God for the sin of the whole world; but it was not, as the assumption just referred to would have made it - "Something to which the human satisfactions performed by penitence bore no analogy at all. In Protestant theology the equivocal character of the idea of satisfaction tends to disappear.

"The satisfaction of which the theologians think is not the Anselmic one, which has no relation to punishment, not that of the penitential system, which is only quasi-penal, but that of Roman law which is identical with punishment."

Another legal term introduced by Tertullian is "Meritum." He regards God above all as the law giver, and religion as a discipline ordained of God through Christ. God's will is rational; yet we must obey not because it is good, but because God has commanded it.

Thus we win <sup>merit</sup> ~~merit~~. God is the rewarder of all merit. If God is the acceptor of good works, He is always the rewarder ..... a good deed has God as its debtor, just as has also an evil deed, since the Judge is the rewarder of every matter. In general, all service of God is meritorious. But in the stricter sense only non-obligatory performances are meritorious. God has ordained a sphere of liberty (Licentia) in order to give an opportunity for

1. De Poenitentia 9.

2. Denney's "Christian Doctrine of Reconciliation". p. 94.

3. De Poenitentia 4.

4. De Poenitentia Ch. 15. 16.



such supererogatory works. To this class belong patience, acts of voluntary penance above all, fasting, virginity, and martyrdom.

In all this region the rule is that of retribution according to law. Tertullian, in fact, looks upon the whole life of the Christian after baptism as strictly a life under the law, its motives, hope of reward and fear of punishment, and the result determined purely according to ~~good~~ legal standards. Of course, he is not the absolute originator of the view that supererogatory work constitutes merit, but he was the first to certify the doctrine of merit, and to give it a firm substance, thereby stamping the doctrine of Western Catholicism with a permanently legal character.

PRAESCRIPTIO: Its Meaning (a) in Roman Law  
(b) in Tertullian.

(a)

THE word "praescriptio" was a technical term of law which had its origin in a purely arbitrary rule of pleading. In the ordinary course of procedure in a Roman action at law, the <sup>la</sup> ~~pa~~retor, upon the application of the parties, drew up a formula for the guidance of the judex to whom the case was remitted for trial. The formula set forth the issues of fact, or of mixed law and fact, which were to be decided. If the defendant wished to rely on any defence other than a bare denial of the plaintiff's case, a clause was introduced by which such defences were raised. This clause was usually placed at the end of the formula and was called an exceptio, but in the case of the defence of "long possession", for reasons which are not important, it was placed at the beginning of the formula, and hence was called praescriptio.

Praescriptio was an important term in Roman Law. It was used in connection with the acquisition of ownership. Occupation was the most primitive of all modes of acquisition. It consisted in the taking possession of a thing which belonged to nobody with the intention of becoming the owner of it. The objects of such occupation would be wild animals, shells or stones on the sea-shore, derelicts and so forth. Later on it became necessary to have a title by <sup>usucapio</sup> prescription, in other words, for providing that, in certain circumstances, possession of a thing, even though in itself unauthorised, shall after a lapse of a particular time ripen into ownership. In some cases this was the only title which conferred the right of ownership. Early Roman Law did not fail to observe this fact, and accordingly it recognised a mode of acquiring ownership by means of possession continued - in the case of immovables - over a period of two years, and in the case of moveables and all other things, over a period of one year.

<sup>prescription was confined to things that were in commerce and not applicable to</sup>  
~~But the <sup>land in the provinces</sup> titles, such as they were, received no legal~~  
protection from the jus civile. The provincial governor, however,

PRAESCRIPTION: Its Meaning.

-2-

introduced by means of their edict, a form of legal protection called "praescriptio longi temporis." If a person, having come into possession of land on some lawful ground, and in good faith, and having continued in possession of that land for a long time, were sued by a person claiming to be the owner of the land, the defendant had a good case of defence to the action, and was protected by what was called a "praescriptio". A long time was declared to be in some cases twenty years, in other cases, ten years.

(B)

TERTULLIAN applies the same principle to the possession of the Scriptures by Christians; so heretics have no right to them. He borrows the term from the language of the Law-courts, and it is used by him over fifty times.

Four suggestions have been made as to the significance of the term as used by Tertullian.

(1) (2)

(1) Dr. Schaff and Dr. Gore suggest a "preliminary plea or objection lodged at the commencement of a suit, which might dispense with the need of entering into any discussion of the merits of the case.

(2) According to Wordsworth<sup>(3)</sup> the term signifies a "demurrer."

(3) It has also been suggested that it signifies an "acquired right". This is the interpretation adopted by Tertullian in "De Praescriptione Haereticorum" C. 37. which is a brilliant defence of the Church's title to the possession of the Scriptures.

(4) According to Dr. Bindley<sup>(4)</sup> the reference is to a clause prefixed to the "intentio" of a formula, for the purpose of limiting the scope of the enquiry, which the "intentio" would otherwise have left open for discussion before the "judex". At the same time, the employment of the praescriptio did not prevent the plaintiff from taking subsequent action on any other points, which had thus been left out.

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is more natural to understand it here in the weaker sense."

1. Tertullian. page 92. 2. Le Theologie de Tertullien. p.360.  
241 3. 4. J.T.S. III. pp. 161-77.

-3-

Dr Morgan suggests<sup>(5)</sup> the last interpretation to be the most probable. According to this, the Christian Church is the plaintiff, and the heretics are the defendants. It is not, however, easy to decide between the third and fourth interpretations.

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|----------------------------------|-----------------------------------|
| 1. Church History II. page 830.  | 4. On De <del>Pæres</del> . Haer. |
| 2. Christian Ministry, page 125. | 5. Tertullian and                 |
| 3. Church History I. page 238.   | Christian Dogma.                  |
|                                  | page 28.                          |

NOTE 11.

(a) REPRESENTARE and (b) REPRAESENTATIO.

REPRAESENTARE is a judicial term and signified originally "to bring into court". It also meant "to exhibit" a thing, and make it present to the senses of the mind. Special significance pertains to this term because it has been contended that Tertullian's use of it justifies the belief that he accepted the doctrine of the Real Presence in the Eucharist. Tertullian uses the word on ten occasions in a legal sense. Dr. Morgan<sup>(1)</sup> asks the question, "Are we justified in concluding from Tertullian's use of the word and its derivatives, that he intends to teach, in such passages as 'quo ipsum corpus suum repraesentat' (Adv. Marc. 1.14.) the doctrine of the presence of the Lord's Body in, or by means of, the Eucharistic Bread?" D'Ales<sup>(2)</sup> maintains that we are justified in arriving at this conclusion. Bellarmine<sup>(3)</sup> on the other hand, admits that it is not sufficient to prove the doctrine of the corporal presence. Dr. Swete<sup>(4)</sup> says that its meaning is "to make present to the mind or eye what has hitherto been unseen or has passed out of sight; whether the presence is actual or not, must be determined in such case by the context." Referring to the use of the term in Adv. Marc. 1.14. he says: "The verb is capable of yielding this meaning, but it is equally susceptible of another, and in view of Tertullian's general attitude towards the question of the Eucharistic Gift, it is more natural to understand it here in the weaker sense."

1. Tertullian. page 92. 2. La Theologie de Tertullian. p.360.  
3. 4. J.T.S. III. pp. 161-77.

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Abdicavit The judicial signification of "abdicare" is to disinherit, to disown. It is seen in Apol. 3 "pater retro patiens abdicavit", also De Exhor. Cast 13. De Praes. Haer.37.

Addicere. A legal term which means to adjudge, award, to sentence and hand over to a creditor. It is used in De Pud, 15.

Advocatus. A counsel or witness called in to the aid of a litigant; a witness to a bond; sometimes a man conversant with the mode of judicial proceedings, whom the governors of provinces were wont to consult; Cf. Ad. Seap. 4. 'inter advocatos et assessores (adsessor - the assistant of a judge)  
De Idol. 23, "non jam advocatorum sed angelorum."  
De Monog. 3.

Altercatio. A technical term of the law courts for cross examination or rejoinder. Apol 2. "Altercandi facultas patet" also De Praes. Haer 18. In De Spec. 8 "ipsa loca contaminari altercati sumus" - Altercari - contendere.

Ampliatio. A legal term signifying the postponement of the decision to some future time convenient to the judge. De Bapt. 13 "addita est ampliatio sacramento"; also De Orat. 6: De Paenit. 7; Adv. Val. 8. The verb 'ampliare' is used in De Orat. 11, 22, 29 ('virtute ampliat gratiam!')

Annotatio. A legal term, the entering the name of a criminal on the register. Apol. 13 'sub eadem annotatione quaestoris divinitas' (See denotare).

Appellamus et Provocamus) Legal terms for carrying an appeal to a higher court. Apol. 10. Arbiter: Legal term for witness. Adv. March 1V. 22. 'Tres de discentibus arbitros futurae visionis et vocis assumit'; also De Bapt. 6; De Je jun 5; Adv. Marc. 11. 27.

Audire hominem: " To enter upon the trial of ~~am~~ a man." Ad.scap.4.

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Cavere: Legal term for decreeing by will, or in writing, or making a bond; De Idol 23 'cavendo quod non facis'. De Praes. Haer. 37 'caverunt'.

Censuales: Legal term of late use for the censor's list, more often for the compilers of the list; Apol 19 'Graecorum etiam censuales conferendi.'

Cognoscere: Legal term for cross-examining in a court before a tribunal. Apol. 2. 'quado si de aliquo nocente cognoscites'; also Adv. Marc. 11.20.

Compensatio: Legal term for a balancing of accounts. De Paenit. 6 hac paenitentiae-compensatione. "De Pud. 12. 'compensatione res acta est.'"

Tertullian is at his best when he employs the Roman law of Compensation to answer the heretic Marcion. In Roman law, compensatio, or set-off, means the balancing of a claim and counter-claim of the same kind. The justice of allowing a defendant to urge a counter-claim had to be admitted even by the civil law. Therefore the condemnatio of the defendant was qualified by a set-off. The civil law, however, maintained that the set-off or compensatio was a matter entirely within the discretion of the judge. The plaintiff was debarred from claiming any more than he was entitled to.

The Marcionites charged God with having instigated the Hebrews to spoil the Egyptians. Tertullian's defence of the divine dispensation in this matter is most ingenious



and eloquent. We are in the atmosphere of the law-courts. The Egyptian is the plaintiff, the Hebrew is the defendant. The charge, however, is against God of having instigated the Hebrew to take away the Egyptian's goods. the Egyptians put in a claim on the Hebrews for gold and silver vessels. The Hebrews assert a counter claim, alleging that by the bond (legal) of their respective fathers, attested by the written engagement of both parties, there were due to them arrears of that laborious slavery of theirs, for the bricks they had made, and the cities and palaces they had built. "Come, unhappy heretic" says Tertullian, " I cite you even as a witness; first look at the case of the two nations, and then you may form a judgment of the Author of the command. It was not by a few plates and cups that anyone would pronounce that compensation should have been awarded to the Hebrews."

The same legal term and illustration is used in the fourth book against Marcion, in which Tertullian shows that the labourer is worthy of his hire. "Now when Christ pronounced labourers to be worthy of their hire, He, in fact, exonerated from blame that precept of the Creator about depriving the Egyptians of their gold and silver. For they who had built for the Egyptians their homes and cities were workmen worthy of their hire, and were not instructed in a fraudulent act, but only set to claim compensation or a set-off for their hire, which they were unable in any other way to exact from their masters."

Competere. Legal term for "to come to an agreement." De Pud. 1.

"ut utrumque competat: also De Pud. 7, 10, 15, 18, 19.

Concussio Legal term for an extortion by means of duress. Ad.Scap. 4. 'in elogio concussione ejus intellecta' - here of an indictment purely vexatious (Bindley) Apol.7. 'ex concussione milites'. De Fug. 12, 13, (concussor) Adv Marc. 1v. 41. Scorp. 10. Of John Baptist's advice to soldiers Luke 111. 14. "neminem concutiatis." (Vulgate).

Conditionalis: Legal term for slaves bound in a remarkable manner to the public service (Oehler). Scorp. 8. 'conditionales minas regis'. De Idol. 12. 'sed conditionalis eram.'

Contemplatio: In Juridical Latin - a consideration. Apol. 39. 'penes Deum major est contemplatio.'

Contumacia: Legal term for obstinacy; refusal to answer to a subpoena. De Paenit 5. 'in intantum contumiciae' De Paenit. 8. 'dissimulatio contumaciae' De Paenit 5 etc.

Convenio: Legal term "to accuse judicially". Adv. Nat. 1.12. 'quantoque genus consetur in origine, tanto origo convenitur in genere', also ad. Nat. 1. 17. De Jejun 13, 18, 'convenio vos et praeter pascha jejunantes'. D. Cor. 10. 'et officiis conveniter'. De Cor. 8. 'ea non convenire usibus nostris Apol 10. 'et majestatio rei convenimur'. Also Apol 28, 31, 35. Adv. Marc. 1. 16. 11. 17. Adv. Hermog. 45. Adv. Mart. 2. De Carn. Ch. 11. De Res Car. 12. 18.

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Debitor: Legal term for debtor. De Paenit.7. 'si secundae quis paenitentiae debitor fuerit'; De Bapt. 12.  
Debitum = debt. De Paenit. 6. 'at hic ut debitum sibi repromittit'.

Defendere: A legal term which is used in different places: in De Bapt. 14. with meaning 'to claim' ne sibi omnia defendere videretur' De Spec. 2. 'ut indubitata et prohibent et defendunt.' Also De Orat. 22. 'defenderet sibi adjec-tionem' "would claim the addition for itself."  
In de Spec. 29 "societates ecclesiarum defende" with meaning 'to defend', 'stand up for' also Apol 1. 'si accusator, non defendit. In Apol. 46. 'si defendam' = 'if I make a defence (as in a law court) In Apol. 4. 'non de nomine probata defendunt' the meaning is 'to avenge'; as also in De Monog. 4. "iniquitates ... semel defendere quolibet cunque fuerunt , also adv. Marc.18.11.

Demonstratio: Legal term for 'an information excluding all doubt in a legal matter'. De. Pud. 12. 18. 'si iterasse competisset demonstrationem.'

Denotare: It was the duty of the censors 'first appointed B.C. 435.) to take the census or rating, and then to draw up the lists of the centuries, tribes, knights and senate. If any one failed to possess the necessary qualifications, his name was marked (notare). This applied to moral unworthiness, or unpatriotic conduct (Cicero De Senect 12). as well as to monetary qualifications. Hence the term '~~notare~~ notare denotare'. (Suetonius, Calig. 56) <sup>was</sup> ~~were~~ used to signify any mark of disapproba-tion which a man might have earned by his conduct in

- public opinion. Apol. 1. 'Si denotatur gloriatur.'
- Denuntiatio: Legal term for 'a demand to know the action which it is proposed to bring against a person in court.' De Pud. 10, 'nec competere ethnicis paenitentiae denuntiati<sup>o</sup>tionem'.
- Deprecari: Legal term - to plead with a judge to excuse a prisoner. Apol. 1. 'nihil illa de causa sua deprecatur' - she pleads no excuse in her cause.†
- Dilatio: Legal term for an adjournment of a case. Apol. 20 'pro isto dilatione.'
- Dispunctio: Legal term for a checking or balancing of a criminal charge sheet. Apol. 18. 'meriti dispunctionem Adv. Marc. 1V. 17. 'a iudice et dispunctore meritum'. Adv. Marc. V. 12. 'dis punctionem boni mali operis'. In Apol. 19. 'dispunctio quotidiana - The daily fulfilment of some prophecy. (Bindley).
- Dispungere: (Sometimes expungere). Legal term for wiping off a debt. It has different shades of meaning in Ter-tullian. (1) to 'wipe out' or 'discharge'. Apol. 37. 'malum malo dispunge'. Adv. Jud. 9. 'specialitir dispungit mus ordiem coeptum', De Pud. 2. 'aut venia dispungit aut poena', (2) to balance accounts Apol. 44 'qui sententiis elogia dispungitis' (to balance the criminal charge sheet,) (3) 'to experience'. De. Res. Car. 58 'nondum resurrectione dispuncti quia rec morte functi.' (4), 'To fulfil', Adv. Marc. 1V. 10. 'medicinae dispunctam prophe-tiam.'
- Diversa pars: Legal term for the opposite side in a trial. De Pud. 7. 'de diversa parte coguntur.' Also De Pud. 8, 9, 19.

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Ejerare: To take exception to /in a juridical sense/ De  
Pud 14. 'ab ipsa ejerabatur.'

Elogium: Legal term for (1) an information conveyed to a judge  
anonymously or otherwise: (2) the abstract of the  
criminal charge transmitted by an inferior judge to  
a superior Cf. Festus in Acts XXV 26. Apol. 2. 'ut  
de nostris elogis loguar.' Ad Scalp. 4. 'pudena  
etram missum ad se Christianum in elogio concussione  
ejus intell acta dismi<sup>s</sup>t seisso eodem elogia; Ibid.  
'elogium est accusatis'. Apol. 24 'irreligio-  
sitatis elogium - criminal charge of irreligion  
(Bindley) Apol. 44. 'qui sententiis elogia dispu-  
gitis De Res. Car. 4. elogium ignobilitas De Idol.  
1. 'ad elogi<sup>i</sup> ambitionem'. De Cor. 5. 'eloga<sup>i</sup>m  
sacrilegi in Deum.' De Jejun 17. 'ad eloga<sup>i</sup>m galae  
tuae pertinet. Apol. 15 Jovis elogia' i.e. the crimes  
of Jupiter. De Pud. 4 'contaminatae carnis elogium.'  
also De Carne. Ch. 11.21. De Spec. 17. Adv. Marc. 1.22  
Ad Nat. 1.2.10.

Emancipatio: Legal term for the release of a son from the  
'pat<sup>r</sup>ia potestas', and for the formal surrender of  
all right of possession to a thing (Bindley).  
Apol. 9. 'adoptandus melioribus parentibus emancipa-  
tus, also De Fug. 12.

Exceptio: Legal term for an equitable plea to the plain-  
tiff's demand, raised on the part of the defendant  
and inserted in the praetor's instructions.  
De Paenit. 5 nulla exceptio tueatur apoena.'

Expungere: Legal term for striking a case off the list  
when disposed of (lit- 'pricking out from a list'.)  
Hence in De Cor. 1. 'to pay off soldiers'. & liberali-  
tas expungebantur in castris milites laureati'  
Apol. 2. 'debito poenae nocens expungendus est, non  
eximendus' in sense of 'discharging a penalty'

De Res. Car 41 'compendio mortis per demutationem expunctae Apol. 35 'et gaudia Caesarum ... expungimus.' also Apol. 15. 21. 40. De Idol. 13 'debitum expungunt.' In De Idol 1 'idololatria crimine expungitur', the word signifies 'to pay off' as a debt. Ad Marc 6. 'omni contumelia expuncti'. De Jejun 11. 'votum expunxisse' Adv. Jud.8. 'expuncta prophetia.' Ad Nat. 1 7 'haec cum expunxeris.' De Orat. 9. 'quot simul expunguntur officia.' De Virg Vel. 11 'nunc responso expungemus' De Paen.9 Also 3. Ad Scorp. 10. De Anima 49 Cf. the use of 'expunctio', fulfilment, in De Idol. 16.

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"	11	638	" " Judaeos	11
<u>Flagitare:</u>	Judicial term for summoning a prisoner before the judge, hence 'to demand clam <sup>o</sup> ourously'. Apol. 46 'quae Christian- orum sanguinem flagitat.'			
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Injectio	11	230	Polemica lib. adv.Hermogenem	10
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Instrumentum	1	585	Apologeticus adv. Gentes	14
"	11	62	Liber de Praescriptionibus	38
"	11	983	Moralia de Monogamia	4
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"	1	565	" " "	46

Imprimere:

Judicial term for "sealing", hence "to sanction."  
Apol. 5. 'nullus Veres impressit' Cf. De Monog.12.

Indulgentia:

Legal term for the clemency of a judge. De Paenit.7.  
De Exh. Cast 3. Adv. Marc. 1V. 29.

Inficiasire: Legal term for 'contesting a point at law' - hence 'to deny'. Apol. 10. 'sed et ipsa inficias si ierit.'

Inquisitio: Legal term for seeking proof of grounds of accusation. Apol. 2. 'inquisitio extenditur.'

Interdictum: Legal term for a summary order or provincial decree, made by the praetor ordering or forbidding something to be done in special cases. De Pud. 12. 'interdictum enim sanguinis.'

Interlocutio: A judicial pronouncement at the beginning of a law suit, which does not annul the whole case, but defines some special line of action. De Pud. 14 'quod interlocutione suspenderit.'

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"	1	687	" "	1V
"	11	450	Polemica Lib. 1V. adv. Marcionem	24
Judicium )	1	307	Apologeticus ad Gentes	1
domesticum )	1	330	" "	3
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vires )				
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Jus (subiect)	11	61	Liber de Praescriptionibus	37
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"	11	855	" " de Resurrectione Carnis	XI
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"	1	711	" de Spectaculis	3
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Lex	1	324	Apologeticus ad Gentes	2
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"	1	348	" " "	6
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"	11	315	Polemica Lib. 11 adv. Marcionem	4
"	11	316	" " " "	5
"	11	333	" " "b "	18
"	11	641	Polemica adv. Judaeos	3
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"	11	987	Moralia de Monogamia	7
"	11	1055	" de Pudicitia	13
"	11	1075	" de "	20
Lex dicta	1	1294	Dogmatica de Oratione	22
"	1	1323	" de Baptismo	13
"	11	537	Polemica Lib. 5 ad Marcionem	13
"	11	779	" " de Anima	50
Lex divina	1	564	Apologeticus ad Gentes	45
"	1	741	" de Idololatria	3
"	1	743	" " "	5
"	1	744	" " "	6
"	11	103	Polemica de Corona	6
"	11	509	" Lib. V. adv. Marcionem	6
"	11	638	" " adv. Judaeos	2
"	11	644	" " " "	4
"	11	647	" " " "	5
"	11	987	Moralia Lib. de Monogamia	7

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Legitima: Legal term for 'prescribed' De Fug. 2. 'in legitima oratione'. De Orat. 10. 'praemissa legitima.'

Locare: Legal term for "to put out the contract". De Idol. 17. 'hostias locet.'

Libripens:

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"	1	709	" de "	4
"	1	739	" " Idololatria	1
"	11	103	Polemica de Corona	6
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Mancipium	11	659	" adv. Judaeos	9
Mancipium )	11	764	" Lib. de anima	41
dotale )	11	933	" de Resurrectione carnis	53
Mandata )	1	324	Apologeticus ad Gentes	2
principum )	11	1023	Moralia de Jejuniis	13
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"	11	530	Polemica Lib. 5 ad Marcionem	XI
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"	11	136	" de Fuga in Persecutione	12
"	11	510	" Lib. v. ad Marcionem	6
"	11	907	" de Resurrectione carnis	46
"	11	927	" " "	57
"	11	1077	Moralia de Pudicitia	20
Manus	1	1436	Dogmatica de Cultu Feminarium	5
Mandus )	11	277	Polemica Lib. 1 adv Marcionem	6
injectio )	11	401	" " IV. " "	8
Matrimonium	1	536	Apologeticus ad Gentes	39
"	1	1379	Dogmatica de Patientia	12
"	1	1394	" Lib 1. ad Uxorem	5
"	1	1403	" Lib.11 " "	2

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"	11	473	Polemica Lib 1V ad Marcionem	34
"	11.	518	" " V " "	7
"	11	968	Moralia Lib.Exhortatione Castitatis	4
"	11	970	" " " "	6
"	11	973	" " " "	9
"	11	985	" Lib. de Monogamia	5
"	11	991	" " " "	9
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Misſilia	11	1088	" Lib. de Pallio	2
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Munera Maritalia	1	1393	Dogmatica Lib.1 ad Uxorem	4
Municipatus	11	910	Polemica de Resurrectione <del>ſua</del> Carnis	47
Mutuae petitiones	11	335	" Lib. 1 adv. Marcionem	20
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"	1	771	" Lib. ad Scapulam	23
"	1	1436	Dogmatica Lib 11 de Cultu Feminarum	5

Mandatum: Legal term for the articles of instruction which required an accuser in the trial of a crime. ~~of~~  
Ad. Scap. 4.

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"	1	769	" " "	20
Orbitas	1	1384	Dogmatica Lib. 1 ad Uxorem	16
Orbus	1	674	Apologeticus ad Nationes	Lib. 11

Obligatio: Legal word literally means 'an obligatory relation, involving two parties.' Apol. 28 'quam nobis obligatio periclitandi', here used in the sense of duty, also in De Carh. Ch. 2.

Obsignata: Legal term which means 'to seal.' It is used by Tertullian as meaning (1) To shut up or close; (2) to ratify. Adv. Marc. V.1. 'alius obsignat.' De Idol. 12 'post fidem obsignatum'. De Cult Fem. 11. 9. 'se spadonatu obsignat' Ad. Uxor. 1.16. 'carnem suam obsignant'. Adv. Jud. 11. 'qui passione Christi .... fuerit obsignatus'. Used in connection with baptism in De Prae. Haer. 26. De. Res. Carn. 8.

Origines firmas means literally 'sure title deeds'. De Praes, Haer. 37.

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"	11	136	Polemica de Fuga in Pers <sup>ee</sup> utione	12
"	11	138	" " " " "	12
Pactum	1	775	Apologeticus Lib. ad Scap <sup>u</sup> llam	1
"	11	397	Polemica Lib.lv adv.Marcionem	5
"	11	754	" Lib. de Anima	35
"	11	1074	Moralia Lib. de Pudicitia	19
Parricidium	1	386	Apologeticus ad Gentes	X1
"	1	674	" " Nationes	Lib.11
Partus	11	733	Polemica Lib. de Anima	25
"	11	735	" " " "	25
"	11	736	" " " "	26
"	11	758	" " " "	36
Pater familias	1	512	Apologeticus ad Gentes	34
"	1	1256	Dogmatica Lib. de Oratione	2

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"	11	197	" " " "	15
"	11	210	" " " "	24
"	11	304	" Lib 1. adv Marcionem	27
"	11	327	" " 11 " "	13
Peculium	1	1333	Dogmatica de Baptismo	20
"	1	1444	" Lib. 11 de Cultu	X1
"	11	135	Feminarum Polemica de Fuga in Persecu-	X1
"	11	601	tione " adv. Valentinianos	14
"	11	615	" " "	25
"	11	759	" Lib. de Anima	37
Pignus	1	353	Apologetica ad Gentes	6
"	1	771	" / Scapulam	23
"	11	916	Polemica de Resurrectione carnis	51
Poessessio	1	634	Apologetica ad Nationes	Lib. 1.
"	1	707	" de Spectaculis	2
"	1	758	" de Idololatria	14
"	11	34	Liber de Praescriptionibus	15
"	11	61	" " "	37
"	11	278	Polemica Lib. 1V adv Marcionem	7
"	11	873	" de Resurrectione carnis	23
"	11	1057	Moralia de Pudicitis	13
Possessio )	1	526	Apologeticus ad Gentes	37
vacua )	11	127	Polemica de fuga in persecutione	2
Possidere )	1	386	Apologetica ad Gentes	X1
proprie )	11	127	Polemica de fuga in Persecutione	2
Postliminium	11	755	Polemica Lib. de Anima	35
"	11	1062	Moralia " " Pudicitia	14
Potestas	1	766	Apologeticus de Idololatria	18
"	11	127	Polemica de fuga in Persecutione	2
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Praedo laventium	1	561	" " "	44



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Praejudicium	1	335	" ad Gentes	4
"	1	709	" de Spectaculis	3
"	11	157	Polemica adv. Gnosticus scorpiace	6
"	11	394	" Lib IV. adv. Marcionem	4
"	11	1063	Moralia Lib de Pudicitia	15

Praescriptio, in its legal sense meant " a clause prefixed to the 'intentio' of a "formula" for the purpose of limiting the scope of an enquiry (excluding points which would otherwise have been left open for discussion before the "judex") and at the same time when Tertullian wrote it was used only of the plaintiff.

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Praescriptio)	1	714	Apologeticus de Spectaculis	8
" norma )	11	109	Polemica de Corona	10
"	11	372	" Lib III adv Marcionem	16
"	11	394	" " IV " "	4
"	11	484	" " IV " "	38
"	11	521	" " V " "	8
"	11	1043	Moralia Lib. de Pudicitia	7
Praescriptio)	1	586	Apologeticus ad Gentes	47
eccezione ) 1	1	658	" " Nationes	Lib. 11
Praescriptio )	11	38	Liber de Praescriptionibus	21
eccezione )	11	57	" " "	35
"	11	74	" " "	45
"	11	180	Polemica Lib. adv. Praxean	2
"	11	190	" " " Hermegenem	XI
"	11	221	" " " Hermogenem	1
"	11	272	" Lib I. ad Marcionem	1
"	11	277	" " I " "	6
"	11	296	" " I " "	22

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Praescriptio )	11	390	Polemica Lib. 1V. ad Marcionem	1
eccezione )	11	407	" " 1V " "	10
"	11	501	" " V " "	1
"	11	551	" " V " "	19
"	11	801	" Lib de Carne Christi	2
"	11	937	Moralia lib de Virginibus Velandis	6
"	11	1041	" " " Pudicitia	6
"	11	1063	" " " "	15
Praevaricari	1	325	Apologeticus adv Gentes	2
Precarium	11	229	Polemica adv Hermogenem	9
Procurator	1	752	Apologeticus de Idololatria	X1
"	1	1406	Dogmatica Lib. 11 ad Uxorem	4
"	11	179	Polemica Lib. adv. Praxean	1
Proprietas	1	480	Apologeticus ad Gentes	24
"	11	58	Liber de Praescriptionibus	35
"	11	318	Polemica Lib. 11 adv. Marcionem	6
Pubertas	11	760	" de Anima	38
"	11	954	Moralia de Virginibus Velandis	X1
Proscriptio )	1	337	Apologeticus ad Gentes	4
bonorum )				
Quaestio	1	324	Apologeticus ad Gentes	2
<u>Papias leges:</u>	A reference to the Papian Law by Augustus Apol. 4.			
<u>Patro-cinari:</u>	Legal term 'to defend at a trial in a law court' hence "to defend", "protect". Apol. 18. quibus aut vetustas aut curiositas aliqua ad famam patro- cinabatur; also De Test Anim. 1. Adv. Marc. X. 7. De Carn. Ch. 20; De Res Car 11 38 Adv. Marc. V 7; De Carn. Ch. 20; De Res. Car 11 38 Adv. Prax. 14 De Paenit. 5.			
<u>Posteriora:concludent:</u>	A maxim of the Law Courts "later instances settle a question and that which happens over-rides precedent." De Bapt. 13.			

- Postliminium: A restoration to former privileges, or release of a prisoner.' De Pud. 15 'cum maxime incesto fornicatore postliminium.
- Praescribere: Legal term which means 'to rule a preliminary objection against'. Apol. 47 'praescribimus adulteris nostris' (see also note on praescriptio).
- Praevaricare: Legal term for 'collusory action', Tertullian in Apol. 2 sarcastically asserts that by their legal method of conducting the trials of the Christians, the Magistrates appeared to be in collusion with the criminals. 'Praevaricaris in leges'. Cf. also De Fug. 7. De Virg. Vel. 8. De Anima 1. De Idol 20, 'quam praevaricatio fidei cum idololatria?' also 'praevaricator' in De Poenit 3. 'Praevaricator perspicaciae suae non est.'
- Procurare: Legal term signifying 'to act as agent for', or 'to take care of', De Bapt. 3. 'procurat'. Adv Marc. 1. 25. 'procurat liberando homini', also LV. 17. 28. 38 V 13. De Res. Car. 12. 18. Adv. Prax. 18 De Pud. 9. De pat. 13. Adv. Val. 11 Cf, English word 'King's Proctor'.
- Pronuntiare: Legal term 'to pronounce the verdict'. De Test Anim: 'prope Christianum pronuntiare'. De Orat. 4. 'si enim ipse pronuntiavit non suam. Apol. 2. Contendisitis ad pronuntrandum. Apol. 46 'quam ad bestias pronuntiantur', also De Res. Car. 16. The substantive pronuntiatio in De Orat. 22. 'sed et manifesta pronuntiatio est.
- Proprietas: Legal term for 'right of possession'. Apol. 24 'arcemur a religionis proprietate' De Cor. 10 'usque adhuc proprietatem istius habitas', also De Praes Haer. 35; De Bapt. 2. De Fug. 2.

Purgare: Legal term 'to acquit of guilt' Apol. 2. 'quod causam purget'. Apol. 4. 'qui habeo quo purger'? Adv Marc. 11 9 'purgatur de mali exprobratione purger.' Apol. 6 'ut viam mihi ad manifestiora purgem Also Apol. 21; Marc. 1V. 27 cf. the principle of Roman judicial procedure as laid down by Festus ( Acts XXV. 16.)

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"	1	632	" ad Nationes	Lib.1
"	1	737	" de Idololatria	30
"	1	1314	Dogmatica de Baptismo	5
"	1	1418	" Lib. 1 Cultu Feminarum	1
"	11	1077	Moralia Lib. de Pudicitia	20
Reus	1	380	Apologeticus ad Gentes	10
Redemptor	1	753	" de Idololatria	XI
Regula	11	203	Polemica adv Praxean	20
Remissio )	1	1269	Dogmatica Lib de Oratione	XI
debiti )	11	428	Polemica Lib 1V adv Marcionem	17
Repudium	11	991	Moralia Lib de Monogamia	9
"	11	993	" " " "	XI
"	11	996	" " " "	XI
Resconjunctae )	11	187	Polemica Lib. adv. Praxean	8
cohaerentes )	11	192	" " " "	12
Res corporales )	11	254	" " " Hermogenem	35
incorporales )	11	695	" Lib. de Anima	6
Rescripta )	1	336	Apologeticus ad Gentes	4
Principalia )				
Restituere	1	344	" " " "	5
"	1	1314	Dogmatica Lib. de Baptismo	5
"	11	478	Polemica Lib. 1V adv. Marcionem	25
"	11	795	" " de Carne Christi	58
"	11	858	" " de Resurrectione Carnis	14
"	11	882	" " de " "	28

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Restituere	11	1042	Moralia Lib de Pudicitia	6
"	11	1070	" " " "	18
"	11	1074	" " " "	20

Reatus: Legal term 'the condition of one 'reus' i.e. 'awaiting judgment.' 'a state of impeachment.' De Bapt. 4. Apol. 3 'quis nominum reatus? De Spec. 5. 'ad originas de idololatria reatum.' De Idol. 1. 'de homicidii reatu non liberatur. De Pud. 21. 'namtibi quae in te reatum habeant.' De Idol 'in alia causa non levioris reatus'. Also Adv. Marc. 11. 15. Ad Nat. 1. 3. De Anima 39 Apol. 4.

Redimere: Legal term "to take up the contract". De Idol. 11 'publicarum vicrimarum redemptor.'

Reformari: Used in legal sense of restoring, transforming, De Paenit. 10. saluti prodactae reformari.' De Pud. 20. Reformatus denuo resumit.'

Repromittit: Legal term for giving a pledge or guarantee for fulfilment of a promise. De Bapt. 2. where the "simplicitas quae in actu videtur" is an earnest of the "magnificentia" to come. (Lupton),

Rescriptum: The judicial term for 'the Emperor's decision on a question submitted to him for solution'. Apol. 4. 'legum novis principalium rescriptorum.' Apol. 2. 'tunc Trajanus rescripsit.'

Resignare: Legal term for 'to unseal'. De Res. Carn. 39. 'to unseal the Old Testament and to seal the New.' Apol. 6. 'ob resignatos cellae vinariae loculos.' De Paen. 5. 'resignari loculos'. De Paen. 5. 'resignari oportere.' De Virg. Vol. 11 'resignarunt pudorem'. Adv. Marc. 14. 10 'resignati jejunii culpam' also De Carn. Ch. 23. De Cult. Fem. 1. 1. De Pud. 6. De Orat. 22.

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"	1	633	" " Nationes	Lib. 1
Senatus )	1	324	" " Gentes	2
Consultum )	1	340	" " "	5
"	1	398	" " "	13
"	1	636	" " Nationes	Lib. 1
"	1	643	" " "	Lib. 1
"	11	1023	Moralia de Jejuniis	13
Senatus de ariolis	1	747	Apologeticus de Idololatria	
Senatus de )	1	355	" ad Gentes	6
Bacchana- )	1	644	" ad Nationes	Lib. 1.
libus )				
+ )				
+ )				
Senatus )	1	1413	Dogmatica lib. ad Uxorem	7
Claudianum )				
Senatus de	1	355	Apologeticus <sup>ad</sup> <del>de</del> Gentes	6
diis				
" " "	1	644	" " Nationes	Lib. 1
Sententia	1	324	" " Gentes	2
"	1	560	" " "	44
"	1	632	" " Nationes	Lib. 1
"	1	1418	" lib. ad Uxorem	9
"	11	1061	Moralia lib. de Pudicitia	14
Sequester	1	1383	Dogmatica lib. ad Uxorem	15
"	11	916	Polemica de Resurrectione Carnis	51
"	11	933	" " " "	63
Sequestrare	11	615	" ad Valentianos	25
"	11	710	" Lib. de Anima	14
"	11	733	" " " "	25
"	11	789	" " " "	55
"	11	795	" " " "	58
"	11	881	" " de Resurrectione Carnis	27
"	11	895	" " " "	38

	Migne Vol.	Migne Page	Book of Tertullian.	Chapter.
Sequestratorium	11	920	Polemica Lib. de Resurrectione Carnis	52
Servitus	1	740	Apologeticus Lib. de Idololatria	3
"	1	754	" " "	12
"	1	763	" " "	17
"	1	766	" " "	18
"	1	1348	Dogmatica " " Poenitentia	6
"	1	1376	" " " Patientia	10
"	11	30	Liber de Praescriptionibus	12
"	11	847	Polemica Lib. de Resurrectione Carnis	5
Servitus poenalis	1	494	Apologeticus Lib. ad Gentes	27
Servus conditionalis	1	754	" Lib. de Idololatria	12
Socius	11	861	Polemica Lib. de Resurrectione Carnis	16
Speciem fingere	11	252	" " ad Hermogenem	32
"	11	850	" " Resurrectione Carnis	7
Sponsalia	11	937	Moralia Lib. de Virginibus Velandis	1
"	11	953	" " "	X1
"	11	954	" " "	X1
Sponsio	1	722	Apologeticus de Spectaculis	16
"	1	769	" de Idol <sup>a</sup> latria	21
"	1	1315	Dogmatica de Baptismo	6
"	11	498	Polemica Lib. IV. adv. Marcionem	43
"	11	754	" de Anima	35
"	11	778	" " "	50
"	11	1055	Moralia Lib. de Pudicitia	12
Sponsor	1	646	Apologeticus Lib. ad Nationes	Lib. 1
"	11	726	" " de Spectaculis	19
"	1	1330	Dogmatica Lib. de Baptismo	18
"	11	636	Polemica Lib. adv. Judaeos	1
"	11	701	" " " Anima	9

	Migne Vol.	Migne Page	Book of Tertullian.	Chapter.
Stipulatio	11	136	Polemica lib. <del>adv.</del> Fuga in Persecutione	12
"	11	778	" Lib. de Anima	50
Subsignatio:	1	1339	Dogmatica Lib. de Poenitentia	2

Sequester: Refers to a depository or trustee who holds the stakes or pledges in a law-suit De Res. Carn. 63 and 51.

Adv. Prax. 27 'sequester dei et hominum Christi.'

Species: Used in a legal sense for 'casus'. De Paenit. 1.  
'eamque maxime paenitentiae specimen.' De Pud. 7.  
'Omissa specie praesenti:' also De Pud. 9. 18. 20.

Status: A word which is frequently used in a legal sense as meaning 'condition'. In Quintil. Inst. 111 6 'status causae', signifies the 'point at issue in a case.'  
Tertullian used the word in a variety of ways, e.g.,  
'status nominis' (Ad. Nat. 1. 12.) 'status judaicus'.  
(Ad. Marc. 1V. 6.) 'status scripti et voluntatis'.  
(Adv. Marc. 1V. 12) 'Statum sumere ordinis' (De Anima 27.) 'Status et sensus rei' ( De Fug. 4.)  
'Statum vertere' (De Pud. 6.) 'status mergitur',  
(De Pud. 1.) 'status salutis' (De. Pud. 9.)

Tertullian uses the word to express with clearness and simplicity, his views of the relationship of the three Persons in the Trinity and of the two natures in Christ. Adv. Prax. 2. 'tres autem non statu sed gradu, nec substantia sed forma, nec potestate sed specie.' Adv. Prax. 27. 'videmus duplicem statum, non confusum, sed conjunctum in una persona, deum et hominem Jesum', 'Persona' stood for one who had the right of property. 'Status' for the condition of such a 'persona.'

Subsellium: The judge's bench in the law courts. De Orat. 16.  
'sut subsellio sederit.'



	Migne Vol.	Migne Page.	Book of Tertullian.	Chapter.
Tabulae ) matrimoniales)	1	1405	Dogmatica ad Uxorem	2
"	11	954	Moralia ad Virginibus Velandis	XI
"	11	993	" " Monogamia	10
"	11	1034	" " Pudicitia	1
Tergiversates	1	1347	Dogmatica ad Poenitentia	6
Testamentum	1	1086	Apologeticus De le Nourry	18
"	11	61	observationes novae Liber de Praescriptionibus	37
"	11	507	Polemica Lib. V. adv. Marcionem	6
"	11	1002	Moralia de Monogamia	16
Testes	1	658	Apologeticus ad Nationes	Lib.1
"	11	439	Polemica Lib. IV adv. Marcionem	21
"	11	1028	Moralia de Pudicitia	16
Titulus	1	308	Apologeticus ad Gentes	1
"	1	1340	Dogmatica, de Poenitentia	2
"	1	554	Apologeticus ad Gentes	42
"	1	596	" " "	49
"	11	791	Polemica Lib. de Anima	56
Traditio	1	690	Apologeticus Testimonio Animae	1
"	11	36	Liber de Praescriptionibus	19
"	11	37	" " "	20
"	11	98	Polemica de Corona	3
"	11	99	" " "	3
"	11	1023	Moralia Lib. de Jejuniis	12
"	11	1026	Moralia Lib. de Jejuniis	15
Transfunctoria) praecepta )	11	304	Polemica Lib. I adv. Marcionem	27

Tabella: The judicial tablet recording the charge and sentence for the crime. Apol. 2. 'denique quid de tabella recititas'; also De Virg. Vel. 12; Ad Nationes 1.15.

Tempus persecutionis: means literally 'the time of legal proceedings'. De Idol. 23.

Tergiversatio: Legal term for evading the charge. De Paenit. 6.  
'cunctationis et tergiversationis.'

Testimonium perhibentes: Legal phrase 'to bear witness'. Apol. 10.  
'testimonium perhibentibus ad hodiernum.'  
Adv. Marc. V. 14. 'testimonium perhibere alicui.'

Titulus: Legal term which means 'the brief specification of the criminal charge. Apol. 6. Apol. 44.  
'suo titulo offeruntur.' De Paenit. 2.  
'horum bonorum unus est titulus." Also De  
Paenit. 2. 'horum-bonorum De Pud. 1. 5. 16. 20.  
Adv. Marc. V. 17; De Idol. 1.

Transgressio: Legal term. De Res. Carn. 49 'per conlegium transgressionis.' De Jejun 7. 'post transgressionem et idolatrium'. Apol. 6. 'reos transgressionis Christianos destinatis'. De Cor. 11  
transgressioni interpretanda'; also Adv. Marc. V. 5. 6. 18. Ad. Nat. 1. 10.

Tutela: Legal term for the office of a guardian of a minor or imbecile. Adv. Marc. 1V. 9. "quantum autem ad tutelam legis". De Pallio. 5. "immundissimum pedum tutelam." Also De Orat. 9.

	<u>Migne</u> <u>Vol.</u>	<u>Migne.</u> <u>Page.</u>	Book of Tertullian.	<u>Chapter.</u>
Univira	11	977	Moralia de Exhortatione Castitatis	13
"	11	1003	" de Monogamia	18
"	11	1014	" " Jejunis	7
Ususfructus:	1	1434	Dogmatica Lib. 11 De Cultu Feminarum	3
"	11	787	Polemica Lib. de Anima	54
Usurpatio	11	54	Liber de Praescriptionibus	33
"	11	57	" " "	34
Vectigale	1	558	Apologeticus ad Gentes	42
"	1	644	" " Nationes	Lib.1
"	1	764	" " "	Lib.11

	<u>Migne Vol.</u>	<u>Migne Page</u>	<u>Book of Tertullian</u>	<u>Chapter</u>
Vectigale	11	138	Polemica de Persecutione	12
Vectigalis libertas	1	437	Apologeticus ad Gentes	18
Venia	1	604	" " "	50
"	11	995	Moralia De Monogamia	XI
"	11	1042	Moralia De Pudicitia	6
"	11	1055	" " "	13
"	11	1061	" " "	14
"	11	1071	" " "	19
Vindicare	11	225	Polemica Adv. Hermogenem	5
"	11	239	" " "	20
"	11	277	" Lib. I Adv. Marcionem	6
"	11	278	" " " "	7
"	11	298	" " " "	23
"	11	299	" " " "	23
"	11	408	X Lib. IV. Adv. "	10
"	11	842	Polemica De Resurrectione Carnis	2
"	11	878	" " " "	26
"	11	1078	Moralia De Pudicitia	21
Vindicta	11	752	Polemica De Anima	34
Votum	11	762	" " "	39
"	11	1019	Moralia De Jejuniis	XI

Venia: Legal term for 'permission to speak in a law court', by way of intervening. De Paenit. 7. 'venia peccatorum permissa.' De Orat. 7. De Pud. 3. 'id est veniam'. De Pud. 10. 'venia potius est paenitentiae fructus'; also De Paenit, 5. 6. 14. etc. De Pud. 12, 13, 16, 18, 19. In addition to the above legal terms (many more might be mentioned) there are a number of legal passages in Tertullian's works - Three of these will suffice for our purpose.

Apol. 2. Here we find a long legal argument in reference

to Christians being denied the general rights of ordinary criminals and to the illegal use of torture in eliciting evidence.

De Carne, Ch. 57: Here there is an important statement in reference to the ancient procedure on manumission at this time. "If you liberate a <sup>la</sup>slave of yours, will his flesh and soul, because they remain the same, have for that reason to suffer the same lashes and fetters and brandings, to which they were previously subjected?

I think not. And yet he is honoured with the brightness of the white robe, and the distinctions of the gold ring, the name, the tribe, and a place at the table of his former master."

In Apol. 2. 'Christianum ... deorum .... inimicum ... in this passage Tertullian sums up the charges against the christians. They were deemed guilty of sacrilege (deorum inimici), of treason (imperatorum), of forming a faction, and being an unauthorised religious sect (legum) of hideous immorality, of outraging natural instincts, of being public enemies, morose and hostile to ordinary trade and commerce ('morum, naturae, totius.')

Tertullian explains in quite a Catholic manner that 'timor' is a term which expresses the fundamental relation of man to God. The 'deus offensus' 'moves his soul.' 'Nam si idcirco te deliquisso paenituerat, qua Dominum coeperas timere, eur quod metus gratia gessisti, recindere maluisti, nisi quia metuere desisti'? (De Paenit. 5.) 'Hinc deus irasci exorsus, unde offendere homo indetus' (De Pat. 5) 'Fear dominates the whole doctrine of penitence'.

'Metus est instrumentum paenitentia.' (De Paenit. 6.)

'Timor autem hominis Dei honor est.' (De Paenit. 7.)

In general 'offendere deum' and 'satisfacere deo' are the proper technical terms. 'Offendisti, sed reconciliari adhuc potes, habes cui satisfacias, et quidem volentem (De Paenit. 7.) In Chapter X are the words 'intolerandum

scilicet pudori, domino offenso satisfacere', and  
in ~~Chapter~~ Chapter XI the words 'castigationem victus atque  
cultus offensio domino praestare'. Along with  
'satisfacere' we have 'deum iratum, indignatum miti-  
gare, placere, reconciliare,  
This legal cast of thought illustrates Tertullian's  
view of God as Lawgiver and as Judge.

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| 23. | The Trial of Jesus Christ                                     | Taylor Innes      |
| 24. | The Prosecution of Jesus                                      | Husband           |
| 25. | The Trial of Christ .....                                     | M. Brodrick       |

## Appendix II

Legal words used by Tertullian classified in alphabetical order.

Taken from Migne's Patrologiae. Vols. 1 and 11. 1866

	<u>Migne</u>	<u>Migne</u>		
	<u>Volume.</u>	<u>Page.</u>	<u>Book of Tertullian.</u>	<u>Chapter.</u>
Abdicare	1.	330	Apologeticus ad Gentes	3.
"	11.	61	Liber de Praescriptionibus	37
Abortum	1	371	Apologeticus ad Gentes	8
"	11	308	Polemica adv. Marcionem, Lib. 11.	29
"	11	757	Liber de Anima	37
"	11	976	Moralia de Exhortatione ) Castitatis )	12
Absolutio	1	604	Apologeticus ad Gentes	50
Acta publica	11	500	Polemica adv. Marcionem, Lib. V.	43
Addicere	1	398	Apologeticus ad Gentes	13
"	1	406	" " "	14
"	1	644	Apologeticus ad Nationes	1
"	11	142	Polemica de Fuga in Persecutione	14
"	11	783	Polemica de Anima	52
"	11	1064	Moralia de Pudicitia	16
Adjudicare	11	61	Liber de Praescriptionibus	37
Adoptio	1	378	Apologeticus ad Gentes	9
"	1	652	" ad Nationes	1
"	1	1260	Dogmatica de Oratione	4
"	11	73	Liber de Praescriptionibus	44
"	11	169	Polemica adv. Gnosticos ) Scorpiace )	12
"	11	813	Liber de Carne Christi	7
"	11	1047	Moralia de Pudicitia	8
Adserto	11	299	Polemica adv. Marcionem Lib. 1.	23
"	11	1066	Liber de Pudicitia	16

26.	Cyprian .....	Benson
27.	St. Paul and the Roman Law	W.E. Ball
28.	Christ in Modern Theology	Fairbairn
29.	The Church in the Roman Empire	Ramsay
30.	The Epistle to the Galatians	Lightfoot
31.	The Epistle to the Romans	Sanday & Headlam
32.	History of the Christian Church	Foakes Jackson
33.	Lives of the Fathers	F.W. Farrar
34.	Historical Commentary on Galatians.	Ramsay
35.	The Theology of the New Testament.	Stevens
36.	The Conversion of the Roman Empire.	Merivale
37.	The Spiritual Principle of the Atonement.....	Scott Lidgett
38.	The Parabolic Teaching of Christ.	Bruce
39.	The Death of Christ.	Franks
40.	The Atonement.	Lewis Edwards
41.	History of Doctrine.	Franks
42.	The Writings of Tertullian.	Bishop Kaye
43.	Latin Christianity	De Labriolle
44.	Paul, the Orator.	Maurice Jones
45.	St. Paul on Trial.	J. Ironside Still.
46.	Introduction to the History of the Creeds .....	A.E. Burn.
47.	The Religious Experience of the Roman People.....	Warde Fowler
48.	Roman Stoicism. ....	Arnold